

WSR 14-03-007
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed January 6, 2014, 7:53 a.m., effective February 6, 2014]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendment to the marketing order (chapter 16-561 WAC) was approved in a referendum of affected red raspberry producers pursuant to RCW 15.65.170.

Purpose: During past legislative sessions, significant amendments were made to the Washington red raspberry commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the proposed amendments to chapter 16-561 WAC. The proposed amendments expand the commission's policy and purpose statements, update the definitions, reduce the number of voting board members and redefine district representation, update the commission member selection process, allow for the voting members to appoint up to two nonvoting advisory board members to the board, add additional power and duties to benefit the industry, update meeting and administrative procedures, and other housekeeping changing [changes]. These proposed amendments are intended to achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-561-030; amending WAC 16-561-010, 16-561-020, 16-561-040, 16-561-060, and 16-561-080.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 13-16-073 on August 6, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 3, Amended 5, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 6, 2014.

Don R. Hover
Director

NEW SECTION

WAC 16-561-005 Marketing order for Washington red raspberries—Policy statement. (1) The marketing of red raspberries within this state is in the public interest. It is vital to the continued economic well-being of the citizens of

this state and their general welfare that its red raspberries be properly promoted by:

(a) Enabling producers of red raspberries to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of the red raspberries they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of red raspberries within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the red raspberry industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that red raspberries be promoted individually, and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's red raspberries;

(b) Increase the sale and use of Washington state's red raspberries in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's red raspberries;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's red raspberries and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of red raspberries produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through adoption of this marketing order.

(4) The Washington state red raspberry commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to red raspberries under the provisions of this marketing order.

NEW SECTION

WAC 16-561-006 Marketing order purposes. This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; increasing production efficiency; ensuring a fair regulatory environment; or increasing per capita consumption of red raspberries grown in Washington state. The Washington state red raspberry commodity board is designated by the director to conduct programs in accordance with chapter 15.65 RCW.

(1) To carry out the purposes of the marketing order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for raspberries. Programs shall be directed toward increasing the sale of raspberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims on behalf of raspberries nor disparage the quality, value, sale, or use of any other agricultural commodity. The

board may also engage in cooperative efforts in the domestic or foreign marketing of red raspberries;

(b) Develop and engage in research for developing better and more efficient production, processing, irrigation, transportation, handling, or marketing of red raspberries and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried out by Washington State University, but if in the judgment of the board, Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities, the project may be carried out by other research agencies selected by the board;

(c) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services to affected producers for the verification of weights, tests, and sampling of quality and quantity of raspberries purchased by handlers from affected producers;

(ii) Information and services enabling producers to meet their resource conservation objectives;

(iii) Red raspberry-related education and training.

(d) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of red raspberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of red raspberries; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(3) The Washington state red raspberry commission will not adopt rules relating to grades and standards.

AMENDATORY SECTION (Amending WSR 86-13-012, filed 6/6/86)

WAC 16-561-010 Definitions ((of terms)). ((For the purpose of this marketing order:)) Definition for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

(1) "Director" means the director of agriculture of the state of Washington or ((his)) the director's duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agricultural Enabling Act ((of 1961)) or chapter 15.65 RCW.

(4) "Person" means any ((person)) individual, firm, ((association, or)) corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government.

(5) "Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors. "To produce" means to act as a producer.

(6) "Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by him or her. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Red raspberry commodity board," hereinafter referred to as "board((:))" or "commission" means the commodity board formed under the provisions of WAC 16-561-020.

(9) "Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer-handler shall be deemed to be a producer with respect to the raspberries which he or she produces and a handler with respect to the raspberries which he or she handles, including those produced by himself or herself.

(12) "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(14) "Affected unit" means one pound net of raspberries.

AMENDATORY SECTION (Amending WSR 92-12-003, filed 5/21/92, effective 6/21/92)

WAC 16-561-020 Red raspberry commodity board.

(1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of ((eleven)) seven voting members. ((Ten)) Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the ((department and the public)) director. The position representing the director shall be a voting member.

((There shall be a minimum of two producer board members per district, with additional producer board members added based on acreage; using two thousand acres as the baseline, every one thousand acres, or increment thereof, would entitle a district to another board member, so long as no single district had an over-all majority of representatives.))

(b) Director-appointed producer positions on the board shall be designated as position 1, position 5, and position 6.

(c) Elected producer positions on the board shall be designated as position 2, position 3, and position 4.

(d) The position representing the director who is neither an affected producer nor a handler shall be designated as position 7.

(e) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be that portion of the state of Washington located west of the summit of the Cascade Mountains and shall be divided into ~~((four))~~ two representative districts as follows:

(i) District I shall have ~~((four))~~ three board members, being positions 1, 2, and 3, ~~((4, and 8;))~~ and shall ~~((be Whatcom County))~~ include the counties of Whatcom, Skagit, Snohomish, and King.

(ii) District II shall have ~~((two))~~ one board member~~((s))~~, being position~~((s 1, and 7))~~ 4, and shall include ~~((the))~~ all western Washington counties ~~((of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pierce, and Thurston))~~ not included in District I.

(iii) ~~((District III shall have two board members, being positions 5 and 9, and shall include the counties of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum.~~

(iv) District IV shall have two members, being positions 6 and 10, and shall include the counties of San Juan, Skagit, and Snohomish)) Position 5 and 6 are designated as at-large position and may be filled from any western Washington county. The positions are filled in accordance with RCW 15.65.250.

(f) The voting board may also appoint up to two additional nonvoting members to serve in an advisory capacity from among the crop advisors, handlers or others with expertise in the red raspberry industry. The voting members of the board will make these appointments at the first meeting of the calendar year. Advisory board member appointments are for a one-year period. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(3) Board membership qualifications. The ~~((affected))~~ producer members of the board ~~((shall))~~ must be practical producers of raspberries and each shall be ~~((citizens and))~~ a resident~~((s))~~ of ~~((the))~~ this state ~~((of Washington)), and over the age of ~~((twenty-five))~~ eighteen years~~((, each of whom is and has))~~. Each producer board member must be and have been actually engaged in producing raspberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his or her income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of appointment or election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.~~

(4) Term of office.

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year. ~~((These))~~ Terms shall expire on November 30.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through ~~((ten))~~ six and the member ~~((appointed by))~~ representing the director, position ~~((eleven))~~ seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - One year;

Positions three, four, five, and nine - Two years;

Positions six, seven, eight, ten, and eleven - Three years.

(d) ~~((No elected member of the board may serve more than two full consecutive three-year terms.))~~ To accomplish the transition to the newly defined districts and areas and to a commodity board structure where the director appoints a majority of the voting board members, the initial producer appointments are as follows:

(i) The current incumbent representing position 6 will be appointed to the new position 1 with an expiration date of November 30, 2015;

(ii) The current incumbent representing position 8 will be appointed to the new position 2 with an expiration date of November 30, 2016;

(iii) The current incumbent representing position 3 will be appointed to the new position 3 with an expiration date of November 30, 2014;

(iv) The current incumbent representing position 5 will be appointed to the new position 4 with an expiration date of November 30, 2014;

(v) The current incumbent representing position 9 will be appointed to the new position 5 with an expiration date of November 30, 2015;

(vi) The current incumbent representing position 10 will be appointed to the new position 6 with an expiration date of November 30, 2016.

Any remaining board members not appointed to a new position will serve out the remainder of their existing term.

(e) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms. Any previous board member may be reelected to a qualified position after such term limits if at least one full three-year period has passed since the last date of the second consecutive term in office.

(5) Nomination ~~((and election))~~ of elected or director-appointed board members. Each year the director shall call ~~((for))~~ a nomination meeting for elected or director-appointed producer board members. ~~((Such))~~ The meeting~~((s))~~ shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of ~~((every such))~~ a nomination meeting shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area according to the list maintained by the ~~((director pursuant to RCW 15.65.200 of the act))~~ board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at ~~((such))~~ a nomination meeting. Nominations may also be made within five days after ~~((any such))~~ the meeting by written petition filed with the director, signed by not less than five affected producers. ~~((At the inception of this order, nominations may be made at the issuance hearing.))~~

(6) Election or advisory vote of board members.

~~(a) ((Members of the board shall be elected by secret mail ballot within the month of October))~~ An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of October. Each affected producer shall be entitled to one vote.

~~((Affected producer))~~ (b) Elected members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area. ((Each affected producer within the affected area shall be entitled to one vote.

~~(b))~~ (c) If a nominee for an elected position does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

~~((e))~~ (d) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(e) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of ((such)) the election. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the list of ((such)) affected producers within the affected area maintained by the ((director in accordance with RCW 15.65.200)) board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(f) Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) Vacancies ((prior to election)).

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under chapter 15.65 RCW and this order.

(8) Quorum. A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) Board compensation. No member of the board shall receive any salary or other compensation, but each voting and advisory board member ~~((shall receive \$35.00 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, together with travel expenses at the rates allowed state employees))~~ may be

compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

~~(10) ((Powers and duties of the board.~~ The board shall have the following powers and duties:

~~(a) To administer, enforce, and control the provisions of this order as the designee of the director.~~

~~(b) To elect a chairman and such other officers as the board deems advisable.~~

~~(c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.~~

~~(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.~~

~~(e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.~~

~~(f) To establish a "raspberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, shall be deposited as often as advisable.~~

~~(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.~~

~~(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.~~

~~(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.~~

~~(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.~~

~~(k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).~~

~~(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the~~

provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

~~(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.~~

~~(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.~~

~~(o) To authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.~~

~~(p) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.~~

~~(H))~~ **Procedures for board.**

(a) The board shall hold regular meetings, at least four times annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change of the regular meeting schedule shall be published in the *Washington State Register* at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular news service.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver ~~((thereof by each))~~ from that member of the board. Notice of special meetings will be in compliance with chapter 42.30 RCW.

NEW SECTION

WAC 16-561-035 Powers and duties of the board.

The board shall have the following powers and duties to:

(1) Administer, enforce, and control the provisions of this order as the designee of the director.

(2) Elect a chairman and such other officers as the board deems advisable.

(3) Employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(4) Pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the

order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(5) Reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(6) Establish a "raspberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board shall be deposited as often as advisable.

(7) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(8) Require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(9) Prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least fifteen days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(10) Establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(11) Adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(12) Carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(13) Bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.

(14) Confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(15) Authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical

which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.

(16) Work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(17) Enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.26 RCW.

(18) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(19) Enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of red raspberries.

(20) Retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(21) Engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(22) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of red raspberries, including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(23) Maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the units of each producer's production pursuant to RCW 15.65.295. This list may be compiled from information used to collect producer assessments for a three-year period.

(24) Maintain a list of the names and addresses of persons who handle red raspberries within the affected area and data on the amount of the red raspberries handled by each person pursuant to RCW 15.65.295 for a minimum three-year period.

(25) Establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(26) Acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to red raspberries.

(27) Submit for review and approval by the director of any new or amended marketing, including for the purposes required under RCW 15.65.287.

(28) Carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

AMENDATORY SECTION (Amending WSR 86-13-012, filed 6/6/86)

WAC 16-561-040 Assessments and collections. (1) Assessments.

(a) The annual assessment on all varieties of raspberries shall be one-half cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require in the case of assessments against affected units stored in frozen condition:

(A) Cold storage facilities storing ~~((such))~~ the commodity to file information and reports with the commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(B) That ~~((such))~~ the commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

(c) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped, stored, or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of ~~((the))~~ this order during or with respect to any season or year, may be refunded on a pro rata basis at the close of ~~((such))~~ the season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of ~~((such))~~ this marketing ~~((agreement or))~~ order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in ~~((such))~~ a specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of ~~((such))~~ the assessment or ~~((such))~~ other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of ~~((the same))~~ it. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ~~((thereon))~~, and ~~((such))~~ the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending Order 1478, filed 7/29/76)

WAC 16-561-060 Termination of the order. ~~((The order shall be terminated if the director finds that fifty-one~~

~~percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent such dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is so assented to or favored whenever twenty percent by numbers and twenty percent by volume of production of the affected producers file written application with him for such termination. The termination shall not, however, become effective until the expiration of the marketing season.)~~ Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

AMENDATORY SECTION (Amending Order 1478, filed 7/29/76)

WAC 16-561-080 ((Separability)) Severability. If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances, or thing shall not be affected thereby.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-561-030 Marketing order purposes.

WSR 14-03-013
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 7, 2014, 10:54 a.m., effective February 10, 2014]

Effective Date of Rule: February 10, 2014.

Purpose: The department responded to a Federal Register notice where the Occupational Safety and Health Administration (OSHA) updated their requirements relating to head protection as recognized in the 2009 edition of the American National Standard[s] [Institute] (ANSI) for Industrial Head Protection. The department is adopting this latest edition of ANSI Z89.1 to four of our industry standards.

The updated ANSI standard includes design provisions as part of comprehensive requirements to ensure that employees use personal protective equipment that will protect them from hazards in the workplace.

WAC 296-56-60111 Head protection.

- In subsection (2), replaced the word "one" with "any." Added a new bullet that reads, "ANSI Z89.1-2009, American National Standard for Industrial Head Protection."

WAC 296-155-205 Head protection.

- In subsection (1), deleted the reference to subdivision (b) and replaced with subdivision (c).
- Added a new subdivision (b) that reads, "The employer must provide each employee with head protection that meets any of the following American National Standards

Institute (ANSI) for industrial head protection: (i) Z89.1-2009; (ii) Z89.1-2003; or (iii) Z89.1-1997.[""]

- Renumbered subdivision (b) to (c).

WAC 296-304-09011 Head protection.

- In subsection (2), replaced the word "one" with "any." Added a new bullet that reads, "ANSI Z89.1-2009, American National Standard for Industrial Head Protection."

WAC 296-800-16055 Make sure your employees use appropriate head protection.

- In subsection (1) deleted last bullet that reads, "That helmets meet the specifications of either the 1997 or 2003 version of ANSI Z89.1, American National Standard for Industrial Head Protection, or the 1986 version of ANSI A89.1, American National Standard for Personnel Protection Protective Headwear for Industrial Workers Requirements."
- Added a new subsection (2) that reads, "Head protection must comply with any of the following consensus standards: (a) American National Standards Institute (ANSI) Z89.1-2009, "American National Standard for Industrial Head Protection"; (b) American National Standards Institute (ANSI) Z89.1-2003, "American National Standard for Industrial Head Protection"; (c) American National Standards Institute (ANSI) Z89.1-1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements[""].[""]
- Renumbered subsection (2) to (3) and renumbered subsection (3) to (4).

Citation of Existing Rules Affected by this Order: Amending WAC 296-56-60111, 296-155-205, 296-304-09011, and 296-800-16055.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 13-21-148 on October 22 [23], 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, 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: January 7, 2014.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 10-09-088, filed 4/20/10, effective 6/1/10)

WAC 296-56-6011 Head protection. (1) Employees exposed to impact, falling or flying objects, or electric shocks or burns shall wear protective hats.

(2) The employer must ensure that all protective helmets comply with ~~((one))~~ any of the following consensus standards:

- ANSI Z89.1-2009, American National Standard for Industrial Head Protection.

- ANSI Z89.1-2003, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1997, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

(3) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

AMENDATORY SECTION (Amending WSR 09-05-071, filed 2/17/09, effective 4/1/09)

WAC 296-155-205 Head protection. (1) All employees on any construction site shall be provided an individual hard hat which meets all requirements of (a) ~~((and (b)))~~ through (c) of this subsection.

(a) Hard hats for the protection of employees against impact and/or penetration of falling and flying objects shall meet the specifications contained in American National Standards Institute, Z89.1-1969, Safety Requirements for Industrial Head Protection.

(b) The employer must provide each employee with head protection that meets any of the following American National Standards Institute (ANSI) for industrial head protection:

(i) Z89.1-2009;

(ii) Z89.1-2003; or

(iii) Z89.1-1997.

(c) Hard hats for the head protection of employees exposed to high voltage electrical shock and burns shall meet the specifications contained in American National Standards Institute, Z89.2-1971.

(2) All employees must have their individual hard hats on site and readily available at all times.

(3) All employees shall wear a hard hat on any construction site whenever there is a potential exposure to danger of flying or falling objects to persons working or occupying the area.

Note: The hard hat may be removed whenever there is no potential exposure to a hazard.

(4)(a) Employees working on asphalt paving crews exposed to extreme temperatures from hot mix and not exposed to falling objects do not have to wear protective hard hats.

(b) Flaggers working with asphalt paving operations must comply with the requirements of WAC 296-155-305.

(5) Caps with metal buttons or metal visors shall not be worn around electrical hazards.

(6) Employees working near moving machinery or in locations which present a hair-catching or fire hazard shall wear caps, nets or other head and face protection that will completely contain the hair.

AMENDATORY SECTION (Amending WSR 10-09-088, filed 4/20/10, effective 6/1/10)

WAC 296-304-09011 Head protection. (1) The employer must provide each affected employee with head protection according to the following requirements:

(a) Each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head.

(b) Each affected employee wears a protective helmet designed to reduce electrical shock hazards where there is potential for electric shock or burns from contact with exposed electrical conductors that could contact the head.

(2) The employer must ensure that all protective helmets comply with ~~((one))~~ any of the following consensus standards:

- ANSI Z89.1-2009, American National Standard for Industrial Head Protection.

- ANSI Z89.1-2003, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1997, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

AMENDATORY SECTION (Amending WSR 10-09-088, filed 4/20/10, effective 6/1/10)

WAC 296-800-16055 Make sure your employees use appropriate head protection. You must:

(1) Make sure employees wear appropriate protective helmets.

- Where employees are exposed to hazards that could cause a head injury. Examples of this type of hazard include:
 - Flying or propelled objects.
 - Falling objects or materials.

- Where employees are working around or under scaffolds or other overhead structures.

~~((That helmets meet the specifications of either the 1997 or 2003 version of ANSI Z89.1, American National Standard for Industrial Head Protection, or the 1986 version of ANSI Z89.1, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.))~~

(2) Head protection must comply with any of the following consensus standards:

(a) American National Standards Institute (ANSI) Z89.1-2009, "American National Standard for Industrial Head Protection":

(b) American National Standards Institute (ANSI) Z89.1-2003, "American National Standard for Industrial Head Protection":

(c) American National Standards Institute (ANSI) Z89.1-1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements."

– You may use protective helmets that do not meet these ANSI standards if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSIs.

~~((2))~~ (3) Make sure employees working near exposed electrical conductors that could contact their head wear a protective helmet designed (that meet the above ANSI standards) to reduce electrical shock hazard.

- Caps with metal buttons or metal visors must **not** be worn around electrical hazards.

~~((3))~~ (4) Make sure employees working around machinery or in locations that present a hair-catching or fire hazard wear caps or head coverings that completely cover their hair.

- Employees must wear a hair net that controls all loose ends when:

- Hair is as long as the radius of pressure rolls with exposed in-running nip points.

- Hair is twice as long as the circumference of exposed revolving shafts or tools in fixed machines.

- Employees must wear a hair covering of solid material when:

- The employee is exposed to an ignition source and may run into an area containing class-1 flammable liquids, such as ether, benzene, or combustible atmospheres if their hair is on fire.

WSR 14-03-017

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed January 7, 2014, 2:53 p.m., effective February 7, 2014]

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

Purpose: Washington state patrol is in need of updating the regulations in order to align state rules with state and federal regulations. The proposed changes include but may not be limited to amending the definition for a private carrier bus to coincide with the federal definition under 49 C.F.R. 390.

Citation of Existing Rules Affected by this Order: Amending WAC 204-32-010.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.290.

Adopted under notice filed as WSR 13-21-103 on October 21, 2013.

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

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

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

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

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

Date Adopted: December 20, 2013.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 08-19-078, filed 9/16/08, effective 10/17/08)

WAC 204-32-010 Definitions. (1) "Chief" means the chief of the Washington state patrol or their designee.

(2) "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (~~((having a seating capacity for eleven or more persons))~~) used regularly to transport persons in furtherance of any organized agricultural, religious, or charitable purpose, and having a seating capacity for:

(a) Eight passengers if the transportation is provided for compensation; or

(b) Fifteen passengers if the transportation is provided not for compensation.

Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission.

(3) "Stop signal" means a sign bearing the word "STOP" which is actuated by the driver of the bus.

(4) "Signal lamps" means red lamps mounted on the vehicle to be used in conjunction with the "stop signal" when the bus is loading or unloading passengers under certain conditions.

(5) "Warning sign" means a sign to be attached to the rear of the bus to inform following motorists of their duty to stop when the "signal lamps" are activated.

WSR 14-03-018

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed January 7, 2014, 3:59 p.m., effective February 7, 2014]

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

Purpose: The proposed changes include but may not be limited to adding new language to address new braking systems and providing clean-up to existing language.

Citation of Existing Rules Affected by this Order: Amending WAC 204-76-010, 204-76-020, 204-76-030, 204-76-040, 204-76-050, 204-76-060, 204-76-070, 204-76-99001, 204-76-99002, 204-76-99003, 204-76-99004, and 204-76-99005.

Statutory Authority for Adoption: RCW 46.37.005.

Adopted under notice filed as WSR 13-21-102 on October 21, 2013.

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 12, 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: December 20, 2013.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 80-10-006, filed 7/25/80)

WAC 204-76-010 Promulgation. By authority of RCW 46.37.005, the state (~~(commission on equipment)~~) patrol hereby adopts the following rules relating to brake systems.

AMENDATORY SECTION (Amending WSR 80-10-006, filed 7/25/80)

WAC 204-76-020 Scope. These rules (~~(shall)~~) apply only to brake systems on vehicles with a gross vehicle weight rating of 10,000 pounds or more.

AMENDATORY SECTION (Amending WSR 83-21-080, filed 10/19/83)

WAC 204-76-030 Definitions. (1) "Air brake hose" means any flexible hose used as an integral part of a service or auxiliary (emergency stopping) air brake system, where flexibility in a connection is mandatory due to vehicle design and includes the service and emergency air hoses between vehicles in a combination of vehicles.

(2) "Air brake reservoir" means a storage container for compressed air.

(3) "Air compressor" means a device which compresses air used for actuation of the brakes and/or other components of the vehicle.

(4) "Air gauge" means a gauge usually mounted on the instrument panel which indicates the air pressure in the air reservoir tanks, brake application pressure, or other air system pressures.

(5) "Air governor" means a regulator which controls the supply of air pressure for the brake system, generally by controlling the air compressor cut-in and cut-out pressure within a preset range.

(6) "Air over hydraulic brake system" means a hydraulic type brake system actuated by an air-powered master cylinder.

(7) "Air pressure protection valve" means a unit through which air flow is prevented except when a preselected input pressure is exceeded.

(8) "Brake" means an energy conversion mechanism used to retard, stop, or hold a vehicle.

(9) "Brake assembly" means an assembly of brake parts, the components of which are determined according to the type or design of the brake system.

(10) "Brake cam" means a cam mounted on the camshaft and located between the ends of the brakeshoes. When rotated by the brake camshaft, the cam expands the brakeshoes against the brakedrum.

(11) "Brake camshaft" means the camshaft which is held to the vehicle axle housing or backing plate by bosses containing bronze or nylon bushings. Air pressure is converted into mechanical force by the brake chamber which is attached by a push rod to the slack adjuster. The slack adjuster multiplies the force by the lever principle and applies the force to the brakeshoes.

(12) "Brake chamber or actuator" means a unit in which a diaphragm converts pressure to mechanical force for actuation of the brakes.

(13) "Brake cylinder" means a unit in which a piston converts pressure to mechanical force for actuation of the brakes.

(14) "Brake master cylinder" means the primary unit for displacing hydraulic fluid under pressure in the brake system.

(15) "Brake pedal" means a foot-operated lever which, when actuated, causes the brake(s) to be applied.

(16) "Brakeshoe" means a rigid half-moon shaped device with friction material affixed to the outer surface. The brakeshoes are generally mounted on a backing plate and are located inside the brakedrum. When expanded by the brake mechanism, the brakeshoes press the brake lining against the brakedrum, which creates friction to stop the rotation of the wheels, which in turn stops the vehicle.

(17) "Brakeshoe anchor pin" means a pin which holds the brakeshoe in its proper place within the brakedrum and serves as a pivot for the brakeshoes. One end of each brakeshoe is generally connected to the backing plate or spider by anchor pins.

(18) "Brake system" means a combination of one or more brakes and the related means of operation and control.

(19) "Brake wheel cylinder" means a unit for converting hydraulic fluid pressure to mechanical force for actuation of a brake.

(20) "Contamination" means any grease, oil, or brake fluid on the brake lining, pad friction surface, or braking surface of the brake drum or rotor.

(21) "Diaphragm" means a rubber partition placed between the two halves of the brake chamber. When air pressure is introduced into the chamber on one side of the diaphragm, the pressure flexes the diaphragm and exerts force on the pushplate attached to the push rod. The pushplate is held up against the diaphragm by a light duty return spring.

(22) "Disc brake" means a brake in which the friction forces act on the faces of a disc.

(23) "Disc brake caliper assembly" means the nonrotational components of a disc brake, including its actuating mechanism for development of friction forces at the disc.

(24) "Disc (rotor)" means the parallel-faced circular rotational member of a disc brake assembly acted upon by the friction material.

(25) "Drum" means the cylindrical rotational member of a drum brake assembly acted upon by the friction material.

(26) "Drum brake" means a brake in which the friction forces act on the cylindrical surfaces of the drum.

(27) "Foot valve" means a brake application and release valve located on the floor or firewall of the motor vehicle between the throttle and the clutch. It may be either a treadle or a pedal and is operated by foot pressure applied by the driver to apply air pressure to the service brake system. The valve may be either attached to the treadle or may be remotely mounted under the floor and connected to the pedal by means of a rod. This valve generally applies air pressure to all braking axles on all vehicles in the combination.

(28) "Hydraulic brake system" means a brake system in which brake operation and control utilizes hydraulic brake fluid.

(29) "Pedal reserve" means the amount of total pedal travel left in reserve when the brake pedal is depressed to the "brake applied" position.

(30) "Push rod" means the sliding rod projecting from a brake chamber and connected to the slack adjuster by which the force of compressed air in the brake chamber is transmitted to the brakeshoes through connecting linkage during a brake application.

(31) "Safety valve" means a pressure release unit used to protect the air system against excessive pressure.

(32) "Service brake system" means the primary brake system used for ~~((retarding))~~ slowing and stopping a vehicle.

(33) "Slack" means the sum of all clearances in the braking system and total system elasticity.

(34) "Slack adjuster" means a lever attached to the brake camshaft and connected to the brake chamber push rod. The slack adjuster provides a means of adjusting the brakes to compensate for brake lining wear.

(35) "Straight air brake system" means a mechanical type brake system actuated by air pressure in brake cylinders or brake chambers.

(36) "Supply air" means the air that is under pressure in the air supply system of a vehicle. It consists of those lines or tanks, except protected air tanks, which are under pressure when the system is fully charged and when all valves are in the normal position with the brakes unapplied.

(37) "Vacuum assisted hydraulic brake system" means a hydraulic type brake system which utilizes vacuum to assist the driver's effort to apply the brakes.

(38) "Vacuum brake reservoir" means a storage container for vacuum.

(39) "Wedge brake" means a wheel brake which uses air or hydraulic pressure to force wedges instead of cams between the brakeshoes to apply the shoes against the brakedrums. In air applied wedge brake systems, the brake actuator axis is parallel to the axle and pushes directly on the wedge in this direction instead of being mounted at right

angles to push a slack adjuster and rotate a cam as in the conventional type of air brake system.

AMENDATORY SECTION (Amending WSR 83-21-080, filed 10/19/83)

WAC 204-76-040 Straight air brakes. Straight air brake systems ~~((shall be))~~ are subject to the following requirements and limitations:

(1) Supply system.

(a) The air compressor for a straight air brake system ~~((shall))~~ must cut in at not less than 85 pounds per square inch and ~~((shall))~~ must cut out at not more than 130 pounds per square inch.

(b) Air compressor buildup time ~~((shall))~~ must not be more than two minutes to increase the air pressure from 60 pounds per square inch to 90 pounds per square inch. Engine speed ~~((shall))~~ will not exceed 1500 RPM to meet this requirement.

(c) Air loss from the air system ~~((shall))~~ must not exceed:

(i) 3 pounds per square inch per minute for a single vehicle.

(ii) 4 pounds per square inch per minute for a two vehicle combination.

(iii) 5 pounds per square inch per minute for a three or more vehicle combination. Air losses ~~((shall))~~ will be measured by the air gauge in the vehicle.

(d) The air system ~~((shall))~~ must contain no more than one quart of contaminants. Water and oil ~~((shall))~~ must be considered contaminants.

(2) Brake assembly.

(a) Adjustment of all brakes ~~((shall))~~ must comply with the manufacturer's recommended specifications as set forth in WAC 204-76-99001, 204-76-99002, 204-76-99003, and 204-76-99004.

(b) Brake system components ~~((shall))~~ must meet all the requirements of RCW 46.37.360.

(i) Brake hoses and their attachments ~~((shall))~~ must:

(A) Meet the requirements of RCW 46.37.360; and ~~((shall))~~

(B) Comply with Part 393.45 of Title 49 C.F.R.

(ii) Brake hose splices ~~((shall))~~ must consist of only those unions specifically manufactured for that purpose and ~~((shall))~~ be properly installed.

(iii) Brakedrums ~~((shall))~~ will not be cracked or broken to the extent that such crack or break appears on the outside of the drum.

(iv) Brake lining, pad friction surface, or braking surface of the brake drum or rotor ~~((shall))~~ must not be contaminated with grease, oil, or brake fluid.

AMENDATORY SECTION (Amending WSR 83-21-080, filed 10/19/83)

WAC 204-76-050 Air over hydraulic brakes. Air over hydraulic brake systems ~~((shall be))~~ are subject to the following requirements and limitations:

(1) Supply system.

(a) The air compressor for an air over hydraulic brake system ~~((shall))~~ must cut in at not less than 85 pounds per

square inch and ~~((shall))~~ must cut out at not more than 105 pounds per square inch.

(b) Air compressor buildup time ~~((shall))~~ must not be more than one minute to increase the air pressure from 60 pounds per square inch to 90 pounds per square inch. Engine speed ~~((shall))~~ will not exceed 1500 RPM to meet this requirement.

(c) Air loss from the air system ~~((shall))~~ must not exceed:

(i) 3 pounds per square inch per minute for a single vehicle.

(ii) 4 pounds per square inch per minute for a two vehicle combination.

(iii) 5 pounds per square inch per minute for a three or more vehicle combination. Air losses ~~((shall))~~ will be measured by the air gauge in the vehicle.

(d) The air system ~~((shall))~~ must contain no more than one quart of contaminants. Water and oil ~~((shall))~~ must be considered contaminants.

(e) Hydraulic fluid ~~((shall))~~ must be maintained in excess of 50 percent of the brake master cylinder capacity.

(2) Brake assembly.

(a) Adjustment of all brakes ~~((shall))~~ must comply with the manufacturer's recommended specifications.

(b) Brake system components ~~((shall))~~ must meet all the requirements of RCW 46.37.360, and brake drums ~~((shall))~~ will not be cracked or broken to the extent that such crack or break appears on the outside of the drum.

(c) Brake lining, pad friction surface, or braking surface of the brake drum or rotor ~~((shall))~~ must not be contaminated with grease, oil, or brake fluid.

AMENDATORY SECTION (Amending WSR 83-21-080, filed 10/19/83)

WAC 204-76-060 Vacuum assisted hydraulic brakes.

Vacuum assisted hydraulic brake systems ~~((shall be))~~ are subject to the following requirements and limitations:

(1) Supply system.

(a) When equipped with a protected vacuum reservoir, there ~~((shall))~~ must be no more than three inches drop in vacuum in one minute after turning off the engine.

(b) When not equipped with a protected vacuum reservoir, a slight drop of the brake pedal should be felt after starting the engine when moderate pressure is applied to the pedal. If a slight drop of the pedal does not occur, the vacuum system ~~((shall))~~ must be deemed to be defective.

(c) Hydraulic fluid ~~((shall))~~ must be maintained in excess of 50 percent of the brake master cylinder capacity.

(d) The hydraulic portion of the system ~~((shall))~~ must pass the following test procedures~~((;-))~~:

(i) With the engine off, a hard brake pedal application ~~((shall))~~ must be made.

(ii) Pedal pressure ~~((shall))~~ must be reduced but not released.

(iii) Pedal pressure ~~((shall))~~ must be gradually reapplied and pedal reserve ~~((shall))~~ must be checked.

(iv) No pedal reserve drop should occur. Any such drop in pedal reserve ~~((shall))~~ must cause the system to be deemed defective.

(2) Brake assembly.

(a) Adjustment of all brakes ~~((shall))~~ must comply with the manufacturer's recommended specifications.

(b) Brake system components ~~((shall))~~ must meet all the requirements of RCW 46.37.360, and brake drums ~~((shall))~~ will not be cracked or broken to the extent that such crack or break appears on the outside of the drum.

(c) Brake lining, pad friction surface, or braking surface of the brake drum or rotor ~~((shall))~~ must not be contaminated with grease, oil, or brake fluid.

AMENDATORY SECTION (Amending WSR 83-21-080, filed 10/19/83)

WAC 204-76-070 Hydraulic brakes. Hydraulic brake systems ~~((shall be))~~ are subject to the following requirements and limitations:

(1) Supply system.

(a) Hydraulic fluid ~~((shall))~~ must be maintained in excess of 50 percent of the brake master cylinder capacity.

(b) The hydraulic system ~~((shall))~~ must pass the following test procedures~~((;-))~~:

(i) With the engine off, a hard brake pedal application ~~((shall))~~ must be made.

(ii) Pedal pressure ~~((shall))~~ must be reduced but not released.

(iii) Pedal pressure ~~((shall))~~ must be gradually reapplied and pedal reserve ~~((shall))~~ must be checked.

(iv) No pedal reserve drop should occur. Any such drop in pedal reserve ~~((shall))~~ must cause the system to be deemed defective.

(2) Brake assembly.

(a) Adjustment of all brakes ~~((shall))~~ must comply with the manufacturer's recommended specifications.

(b) Brake system components ~~((shall))~~ must meet all the requirements of RCW 46.37.360, and brake drums ~~((shall))~~ will not be cracked or broken to the extent that such crack or break appears on the outside of the drum.

(c) Brake lining, pad friction surface, or braking surface of the brake drum or rotor ~~((shall))~~ must not be contaminated with grease, oil, or brake fluid.

AMENDATORY SECTION (Amending WSR 89-12-019, filed 5/30/89)

WAC 204-76-99001 Bolt type brake chamber data.

BOLT TYPE BRAKE CHAMBER DATA				
Type	Effective Area (Square Inches)	Outside Diameter	Maximum Stroke With Brakes Adjusted	Maximum Stroke At Which Brakes ((Shall)) <u>Must</u> Be Readjusted
A	6	5 1/4	Should be	1 1/4
B	9	6 3/16	as short as	1 3/8
C	12	6 15/16	possible	1 3/8
D	16	8 1/16	without	1 3/4
E	24	9 3/16	brakes	1 3/4
*F	30	9 7/8	dragging	2
G	36	11		2 1/4

* Most common types.

AMENDATORY SECTION (Amending WSR 89-12-019, filed 5/30/89)

WAC 204-76-99002 Clamp type brake chamber data.

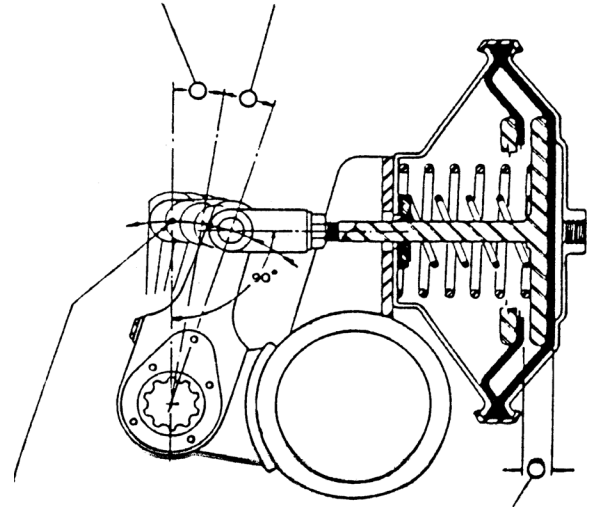
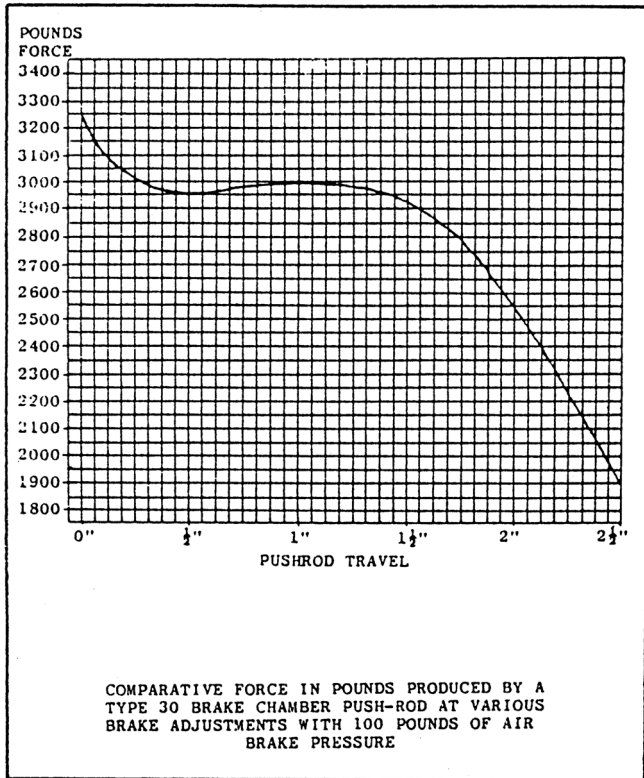
CLAMP TYPE BRAKE CHAMBER DATA					
Type	Effective Area (Square Inches)	* Outside Diameter	Maximum Stroke With Brakes Adjusted	Maximum Stroke At Which <u>Clamp Type Brakes</u> ((Shall)) <u>Must</u> Be Readjusted	<u>Maximum Stroke At Which Long Stroke Clamp Type Brakes Must Be Readjusted</u>
6	6	4 1/2	Should be	1 1/4	
9	9	5 1/4	as short as	1 3/8	
12	12	5 11/16	possible	1 3/8	<u>1 3/4</u>
16	16	6 3/8	without	1 3/4	<u>2</u>
20	20	6 25/32	brakes	1 3/4	<u>2 (2.5" rated stroke)</u> OR <u>2 1/2 (3" rated stroke)</u>
24	24	7 7/32	dragging	1 3/4	<u>2 (2.5" rated stroke)</u> OR <u>2 1/2 (3" rated stroke)</u>
((**24 LS	24	7 7/32		2))	
30	30	8 3/32		2	<u>2 1/2</u>
36	36	9		2 1/4	

* Dimensions listed do not include capscrew head projections for bolt clamp projections for clamp type brake chambers.

~~((** Long stroke.))~~

AMENDATORY SECTION (Amending WSR 80-10-006, filed 7/25/80)

WAC 204-76-99003 Push rod force vs. travel. The following chart outlines push rod force vs. travel:



POINT OF GREATEST LEVERAGE MOVEMENT PAST THIS POINT RESULTS IN LESS LEVERAGE, REDUCED INPUT AND LOWER BRAKE EFFICIENCY.

FIRST HALF OF RATED TRAVEL BRAKE CHAMBER IS AT THE MAXIMUM EFFICIENCY.

AMENDATORY SECTION (Amending WSR 88-01-018, filed 12/8/87)

WAC 204-76-99005 Air operated wedge brake adjustment. Wedge brake shoe travel ((shaft)) must not exceed 1/16 inch, nor shall the gap between the brake shoe lining and the brake drum exceed .06225 inch when the brake is released.

AMENDATORY SECTION (Amending WSR 80-10-006, filed 7/25/80)

WAC 204-76-99004 Relationship of push rod and slack adjuster angle to brake force. The following diagram shows the relationship of push rod and slack adjuster angle to brake force:

RESULT
EVEN TORQUE (BRAKE INPUT)
BETWEEN BRAKE ADJUSTMENTS

LAST HALF OF CAM ROTATION
LEVERAGE INCREASING TO THE MAXIMUM AND BRAKE CHAMBER EFFICIENCY DECREASING WITH LENGTH OF STROKE.

FIRST HALF OF CAM ROTATION
BRAKE CHAMBER EFFICIENCY IS MAXIMUM AND LEVERAGE IS MINIMUM AT BEGINNING OF STROKE. LEVERAGE INCREASES WITH THE INCREASED MOVEMENT.

WSR 14-03-019

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed January 7, 2014, 4:02 p.m., effective February 7, 2014]

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

Purpose: The WAC as currently written is confusing, hard to understand, and lacks defined violations of the rule.

The proposed changes will allow the WAC to be reorganized, cleaning up unnecessary definitions, identify rule violations and penalties, and most importantly putting it into the plain language format. The additions will keep this rule current with industry practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 212-80-020, 212-80-028, 212-80-043, 212-80-096, 212-80-103, 212-80-128, 212-80-133, 212-80-138, 212-80-140, 212-80-145, 212-80-150, 212-80-155, 212-80-160, 212-80-170, 212-80-175, 212-80-180, 212-80-185, 212-80-188, 212-80-190, 212-80-195, 212-80-200, 212-80-220, 212-80-225, 212-80-230, 212-80-255, 212-80-260 and 212-80-265; and amending WAC 212-80-001, 212-80-005, 212-80-010, 212-80-015, 212-80-018, 212-80-023, 212-80-033, 212-80-038, 212-80-048, 212-80-053, 212-80-058, 212-80-063, 212-80-068, 212-80-073, 212-80-078, 212-80-083, 212-80-088, 212-80-093, 212-80-098, 212-80-108, 212-80-113,

212-80-118, 212-80-123, 212-80-165, 212-80-205, 212-80-210, 212-80-215, 212-80-235, 212-80-240, 212-80-245, and 212-80-250.

Statutory Authority for Adoption: RCW 18.270.900 and 18.160.030.

Adopted under notice filed as WSR 13-21-140 on October 23, 2013.

Changes Other than Editing from Proposed to Adopted Version:

- Additional clean up to the language was performed throughout the entire chapter to include but not limited to adding the word system to "fire protection sprinkler (system) contractor."
- Updating some RCW references.
- Updating the diagrams used.
- Provide detailed information regarding the process for denial, suspension or revocation of a certificate.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 31, Repealed 27.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 31, Repealed 27.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 31, Repealed 27; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 2013.

John R. Batiste
Chief

Chapter 212-80 WAC

FIRE PROTECTION SPRINKLER SYSTEM CONTRACTORS

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-001 Purpose. The purpose of this (~~regulation~~) chapter is to adopt rules to a single statewide standard of performance and compliance for the licensing of fire protection sprinkler system contractors, the issuance of certificates (~~of competency, trainee certificates~~), and (~~for~~) the issuance of civil fines (~~and citations as defined in~~) for violations of any provision of chapter((s)) 18.160 ((and)) or 18.270 RCW or any provision of this chapter.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-005 Applicability. This (~~regulation~~) chapter applies to any (~~and all persons or organizations~~) person performing as a fire protection sprinkler system contractor (~~and/or~~) or certificate (~~of competency holder, with or without the required state licensing and/or certification~~) holder as defined in chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-010 Definitions. The following definitions (~~shall~~) will apply (~~to this regulation~~) throughout this chapter:

(1) "Authority having jurisdiction (AHJ)" means the organization, office, or individual responsible for issuing permits, approving layout drawings, ((equipment)) enforcing the requirements of a code or standard or approving materials, an installation, or a procedure. Usually, the AHJ is the building (~~and/or~~) or fire official of the city or county in which the job site is located. In certain cases, such as health care facilities, transient accommodations, and day care facilities, the AHJ is the city or county building (~~and/or~~) or fire official and the (~~chief of the Washington state patrol, through the~~) director (~~of fire protection~~).

(2) "Certificate" means a certificate of competency granted by the director (~~of fire protection~~) under chapter 18.270 or 18.160 RCW, and is valid within the state and all political subdivisions, and meets all of the requirements for license or certification that may be applied by the political subdivision.

(3) "Citation" means written notification issued by the (~~chief of the Washington state patrol, through the~~) director (~~of fire protection,~~) pursuant to RCW (~~18.160.040~~) 18.160.120 or 18.270.020 of a civil penalty for a violation of any provision of chapter((s)) 18.160 or 18.270 RCW or this chapter. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(4) "Contractor" means any person(~~, corporation, or other entity, licensed under chapter 18.160 RCW, which performs any work covered by the provisions of this chapter~~) that offers to contract for the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such system under chapter 18.160 RCW.

(5) "Digital signature" means a secure signature in electronic form attached to an electronic record. Examples of electronic signatures include a digitized image of a "wet" signature, a graphical representation of a handwritten signature (constructed using graphics software or special fonts), or other icons or representations adopted by the person with the intent to sign the document. The digital signature must:

(a) Be unique to the certificate holder;

(b) Be capable of independent verification;

(c) Be under the exclusive control of the certificate holder;

(d) Transform the electronic record such that a recipient can determine that the record was signed by the certificate holder; and

(e) Transform the electronic record such that a recipient can determine if the initial record was altered since the transformation was made.

(6) "Direct supervision" means the person providing direction, oversight, inspection, and observation of the work performed on the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system.

(7) "Director" means the chief of the Washington state patrol through the director of fire protection or his or her designee.

("Director of fire protection" means the state fire marshal and/or his or her authorized representative.

"Dry pipe sprinkler system" means a system employing automatic sprinklers attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) allows the water pressure to open a valve known as a dry pipe valve. The water then flows into the piping system and out to the open sprinkler(s).

"Fire protection sprinkler fitting" means installing, altering, and repairing sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assembly of piping or conduit beginning at the connection to the primary water supply within a building, sprinkler tank heaters, air lines and all tanks and pumps attached thereto.))

(8) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that involves similar capabilities.

(9) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(10) "Fire protection sprinkler system" means an assembly of underground ((and/or)) or overhead piping beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire or other products of combustion. ((The fire protection sprinkler system (with the exception of residential combination systems) starts at the point where the last nonfire water use is taken from the supply mains. This is the point just down stream of the last tap for domestic or process water, the last water control valve that is required by a city or other authority, or the point where the water can be considered nonflowing.

"Fire pump" means a listed pump supplying water at the flow and pressure required by water based fire protection systems.

"FOR DESIGN ONLY" means a certificate of competency holder only allowed to perform the design of a fire protection sprinkler system consistent with the level of certification he or she holds. In the case of a "State Level U certification," "FOR DESIGN ONLY" merely allows the individual to maintain their certification.))

(11) "Formal hearing" means a hearing before a hearings officer where laws, rules, and evidence are presented, considered, and a decision is rendered.

(12) "General contractor" means a contractor whose business operations require the use of more than one building trade or craft for a single job, project, or building permit. A general contractor includes a person who superintends, or consults on, in whole or in part, work that falls within the definition of a contractor.

(13) "Hazard" means a condition which could result in injury or death to a person ((and/or)) or damage to property.

(14) "Hearings request" means the written request for a formal hearing to contest a civil penalty.

("Hose connection" means a combination of equipment provided for connection of a hose to the standpipe system that includes a hose valve with a threaded outlet.))

(15) "Inspection" means a visual examination of a fire protection sprinkler system, or portion of the system, to verify that the system appears to be in operating condition, is free from physical damage, and complies with the applicable statutes and regulations adopted by the state.

("Instance" means the number of times a person has been cited for a violation of chapters 18.160, 18.270 RCW, or this chapter. These will be identified as 1st, 2nd, and 3rd instances.

"Journey-level sprinkler fitter" means any person who has been issued a certificate by the director of fire protection as provided by chapter 18.270 RCW.))

(16) "Licensed contractor" means a contractor issued a license to perform fire protection sprinkler system work by the director pursuant to WAC 212-80-053 of this chapter.

(17) "Maintenance" means ((work performed on a)) an inspection conducted by either a journey level or residential level sprinkler fitter or an inspection and testing technician (ITT) of all the components of an automatic fire ((suppression)) protection sprinkler system and the work performed to keep the system's equipment operable((-or to make repairs)).

("Network fire protection sprinkler system" means a type of multipurpose system utilizing a common piping system supplying domestic plumbing fixtures and fire sprinklers as defined by NFPA 13D.))

(18) "Mitigation or hearing officer" is the assistant state fire marshal or his or her designee who will preside over an informal, mitigation conference to discuss a civil penalty that has been assessed against a person for a violation of this chapter.

(19) "NFPA" means the National Fire Protection Association. The following national standards adopted by the NFPA apply to fire sprinkler suppression systems:

(a) "NFPA 13D" means, in addition to the definition contained in chapter 18.160 RCW, the inclusion of minor accessory uses such as garages normally found in residential occupancies. The following definitions will apply to the common types of sprinkler systems that can be installed in a NFPA 13D:

(i) Multipurpose piping sprinkler system: A piping system intended to serve both domestic needs in excess of a single fixture and fire protection needs from one common piping system throughout the dwelling unit(s).

(ii) Network sprinkler system: A type of multipurpose system utilizing a common piping system supplying domestic fixtures and fire sprinklers where each sprinkler is supplied by a minimum of three separate paths.

(iii) Passive purge system: A type of sprinkler system that serves a single toilet in addition to the fire sprinklers.

(iv) Stand-alone sprinkler system: A sprinkler system where the above ground piping serves only fire sprinklers.

(v) Antifreeze sprinkler system: A wet pipe system using automatic sprinklers that contains a liquid solution to prevent freezing of the system, and is intended to discharge the solution upon sprinkler operation, followed immediately by water from a water supply.

(vi) Dry pipe sprinkler system: A sprinkler system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, and the water then flows into the piping system and out the opened sprinkler.

(vii) Preaction sprinkler system: A sprinkler system employing automatic sprinklers that are attached to a piping system that contains air with a supplemental detection system installed in the same areas as the sprinklers.

(b) "NFPA 13R" means ~~((the standard used by the National Fire Protection Association for))~~ the installation and design of fire suppression sprinkler systems in residential occupancies up to and including four stories in height in buildings not exceeding 60 ft (18 m) in height above grade plane.

(c) "NFPA 13" means ~~((the standard used by the National Fire Protection Association for))~~ the installation and design of fire suppression sprinkler systems in commercial or high occupancy facilities.

~~((NFPA 14" means the standard used by the National Fire Protection Association for the installation of standpipe and hose systems.))~~

(d) "NFPA 20" means ~~((the standard used by the National Fire Protection Association for))~~ the selection and installation of pumps, both centrifugal and positive displacement, that supply liquid for a private fire protection system.

(e) "NFPA 24" means ~~((the standard used by the National Fire Protection Association for))~~ the installation of the dedicated underground fire service main of a water based fire protection system.

(f) "NFPA 25" means ~~((the standard used by the National Fire Protection Association for))~~ the inspection, testing, and maintenance of water based fire protection systems.

(20) "NICET" means the National Institute for Certification in Engineering Technologies.

~~((NITC" means the National Inspection Testing Certification.))~~

(21) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of individuals and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

~~((Preaction system" means a sprinkler system employing automatic sprinklers attached to a piping system containing air, which may or may not be under pressure, with a supplemental detection system installed in the same areas as the sprinklers.))~~

(22) "Qualified" ~~((shall))~~ means an individual who has demonstrated through education, training, examination, ~~((and/or))~~ or national certifications the competency, skill, and ability necessary to perform any work covered ~~((and/or))~~ or defined by this chapter and chapters 18.160 and 18.270 RCW to the satisfaction of a relevant jurisdiction. In matters of compliance with the licensing and certification requirements of this chapter and chapters 18.160 and 18.270 RCW, the relevant jurisdiction shall be the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection.~~

~~"Residential level sprinkler fitter" means anyone who has been issued a certificate by the director of fire protection limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13, NFPA 13D and NFPA 13R).~~

(23) "Repair" means to restore by replacing a part of or putting together what is torn or broken on the fire protection sprinkler system.

(24) "Revoke" means the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection, shall))~~ will rescind a company's license or an individual's ~~((certification))~~ certificate. ~~((Such))~~ This action causes ~~((said))~~ the company or individual to cease any ~~((and all))~~ work in the fire protection sprinkler system field in Washington state ~~((until such time as the chief of the Washington state patrol, through the director of fire protection, is satisfied with the resolution of the issue which caused the license or certificate to be revoked.~~

~~"Standpipe" means the vertical portion of the system piping that delivers the water supply for hose connections, and fire sprinklers on combined systems, vertically from floor to floor. The term standpipe also refers to the horizontal portion of the system piping that delivers the water supply for two or more hose connections, and fire sprinklers on combined systems, on a single level as defined by NFPA 14.~~

~~"Standpipe system" means an arrangement of piping, valves, hose connections, and allied equipment installed in a building or structure, with the hose connections located in such a manner that water can be discharged in streams or spray patterns through attached hose and nozzles, for the purpose of extinguishing a fire, thereby protecting a building or structure and its contents in addition to protecting the occupants as defined by NFPA 14.~~

~~"State certified fire sprinkler system inspection and testing technician" (ITT) means a state certificate of competency holder who is qualified to inspect and/or test NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems per the definition of fire protection sprinkler system in this chapter. However, testing of other fire protection systems such as preaction, deluge, foam, or fire pump and maintenance of any type of system defined under this chapter or chapter 18.160 RCW shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.~~

~~"State fire marshal" means the director of fire protection or his/her authorized representative.~~

~~"State Level 1 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D fire protection sprinkler system or any part of such a system.~~

"State Level 1 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D fire protection sprinkler system or any part of such a system.

"State Level 2 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D and/or an NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level 2 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D and/or a NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level 3 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, maintain, or service an NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW.

"State Level 3 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW.

"State level inspection and testing contractor licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the inspection or testing of a wet or dry pipe NFPA 13D, NFPA 13R, NFPA 13, or other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW. However, the testing and maintenance of fire protection systems such as preaction, deluge, foam, or fire pumps, shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.

"State Level U certification" means a certificate of competency holder who is qualified to certify the installation of the underground portions of fire protection sprinkler systems in conformance with recognized standards adopted by the director of fire protection.

"State Level U licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the installation of the underground portions of fire protection sprinkler systems in conformance with the recognized standards adopted by the chief of the Washington state patrol, through the director of fire protection).

(25) "Suspend" means the ((chief of the Washington state patrol, through the)) director ((of fire protection,)) holds a company's license or individual's certificate inactive until such time as the ((chief of the Washington state patrol, through the)) director ((of fire protection, feels confident)) determines that the company or individual is in compliance

with the requirements of this chapter and chapters 18.160 and 18.270 RCW.

(26) "Testing" means a procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as water flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the appropriate chapter of NFPA 25.

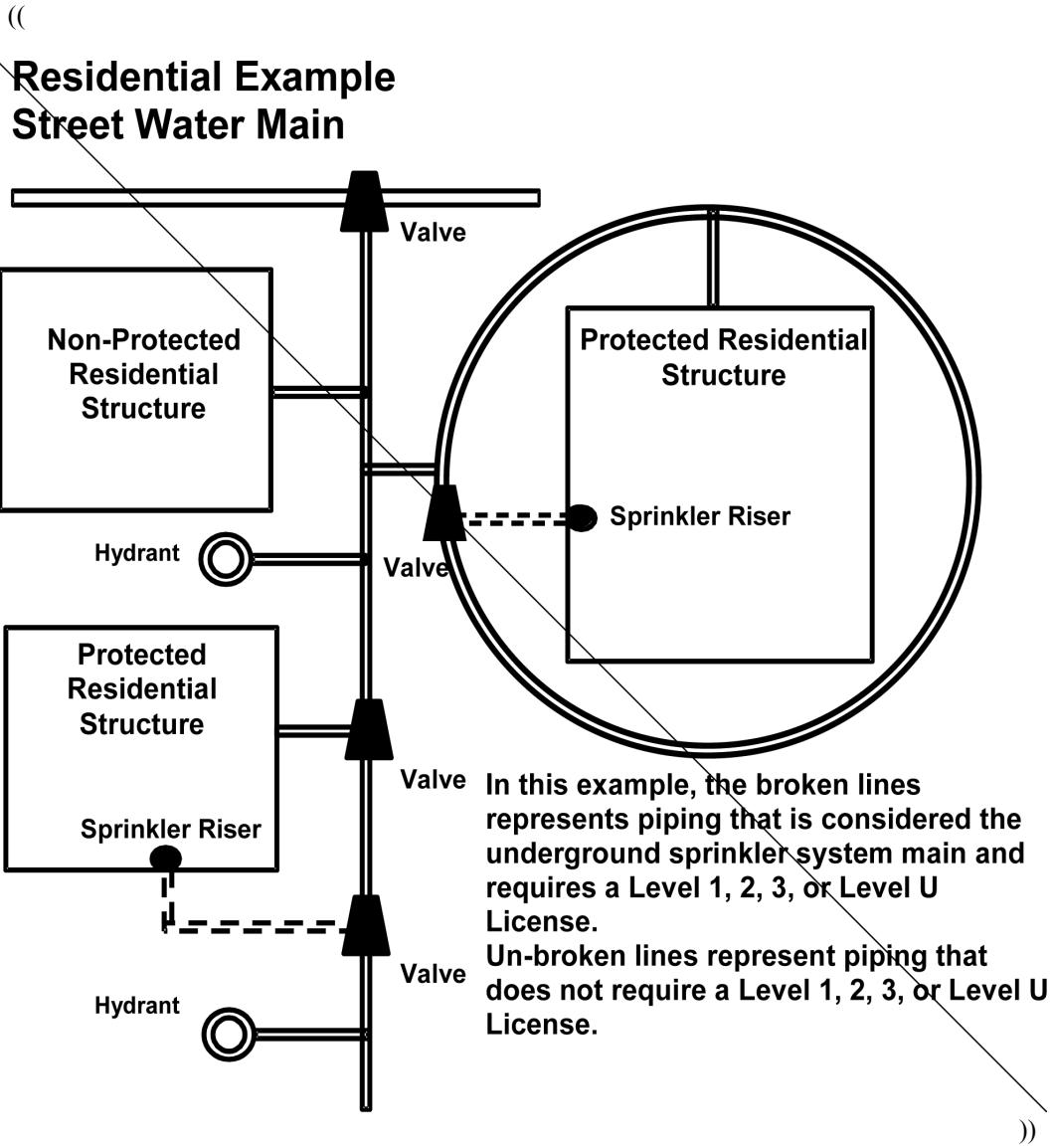
(27) "Trainee" means a person who:

(a) ~~Has been issued a training certificate by the ((chief of the Washington state patrol, through the)) director ((of fire protection, who)); and~~

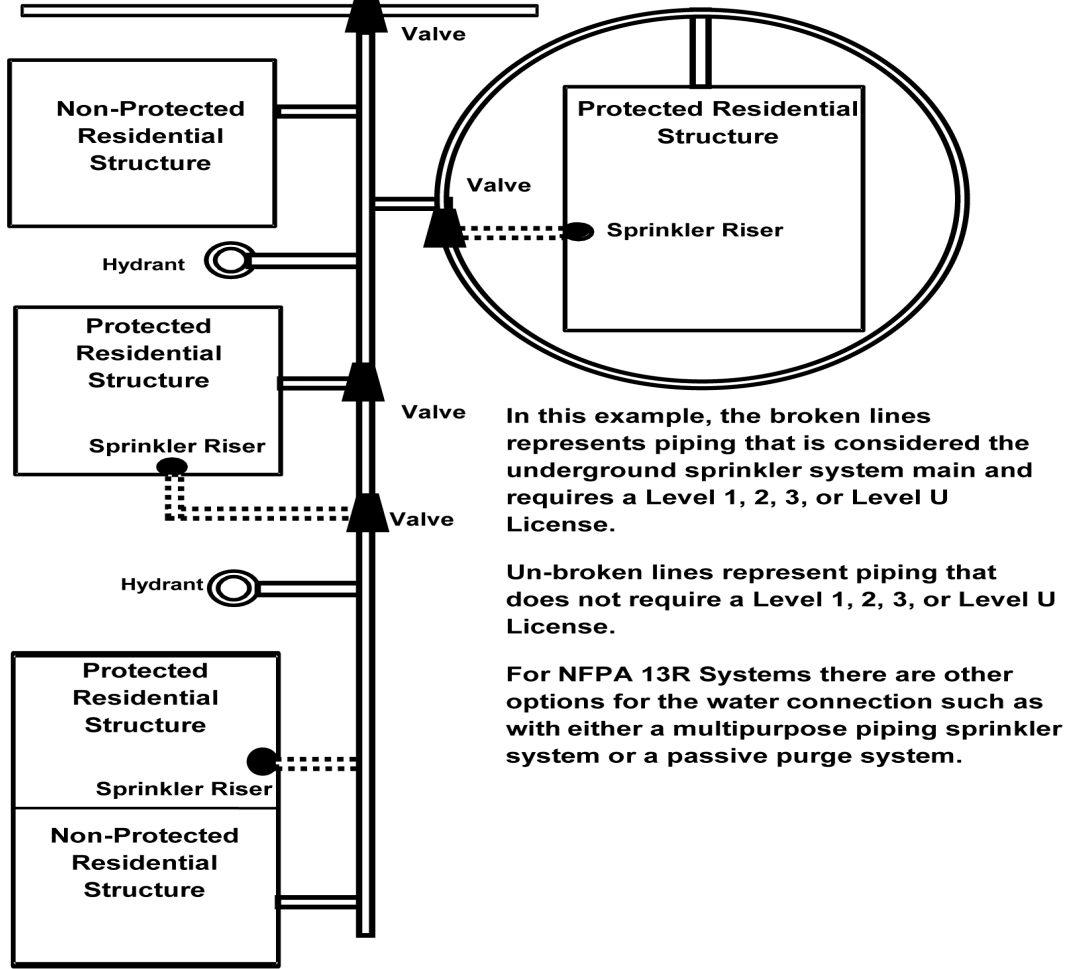
(b) ~~Is learning the fire protection sprinkler fitting trade under the supervision of a journey-level sprinkler fitter or residential sprinkler fitter working in his or her specialty.~~

~~(("Type" means the classification of violation as minimal, moderate, and severe. These are identified as Types I, H, and III respectively.))~~

(28) "Underground" means the portion of the fire protection sprinkler system that starts at the point where the last nonfire water use is taken from the supply mains. For the purpose of this subsection, "point where the last nonfire water use is taken from the supply mains" means the point just downstream of the last tap for domestic or processed water, the last water control valve that is required by a city or other authority, or the point where the water can be considered nonflowing and if shut off would shut off only the sprinkler system. This subsection does not apply to residential multi-purpose piping fire protection sprinkler systems.



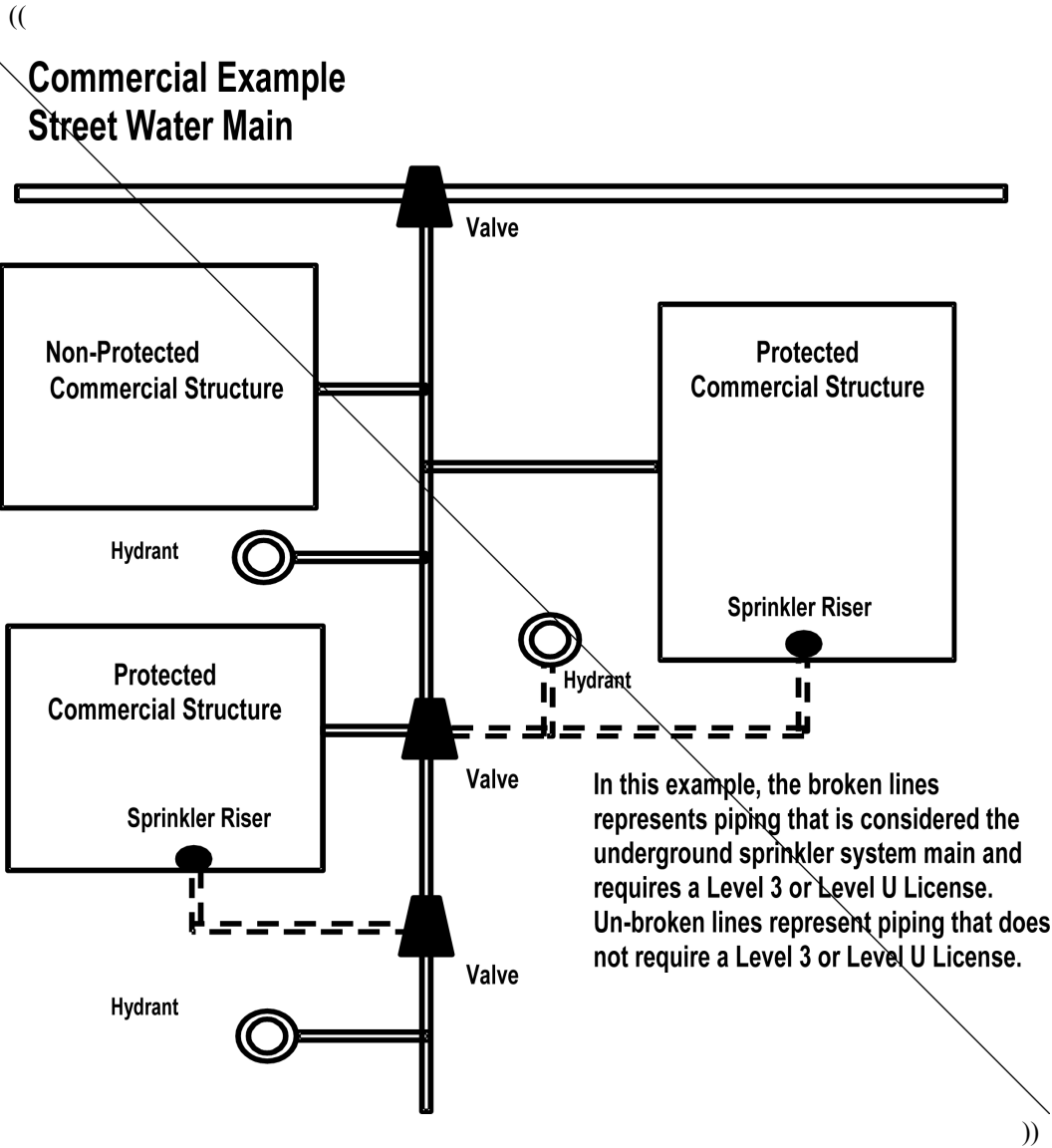
Residential Example Street Water Main



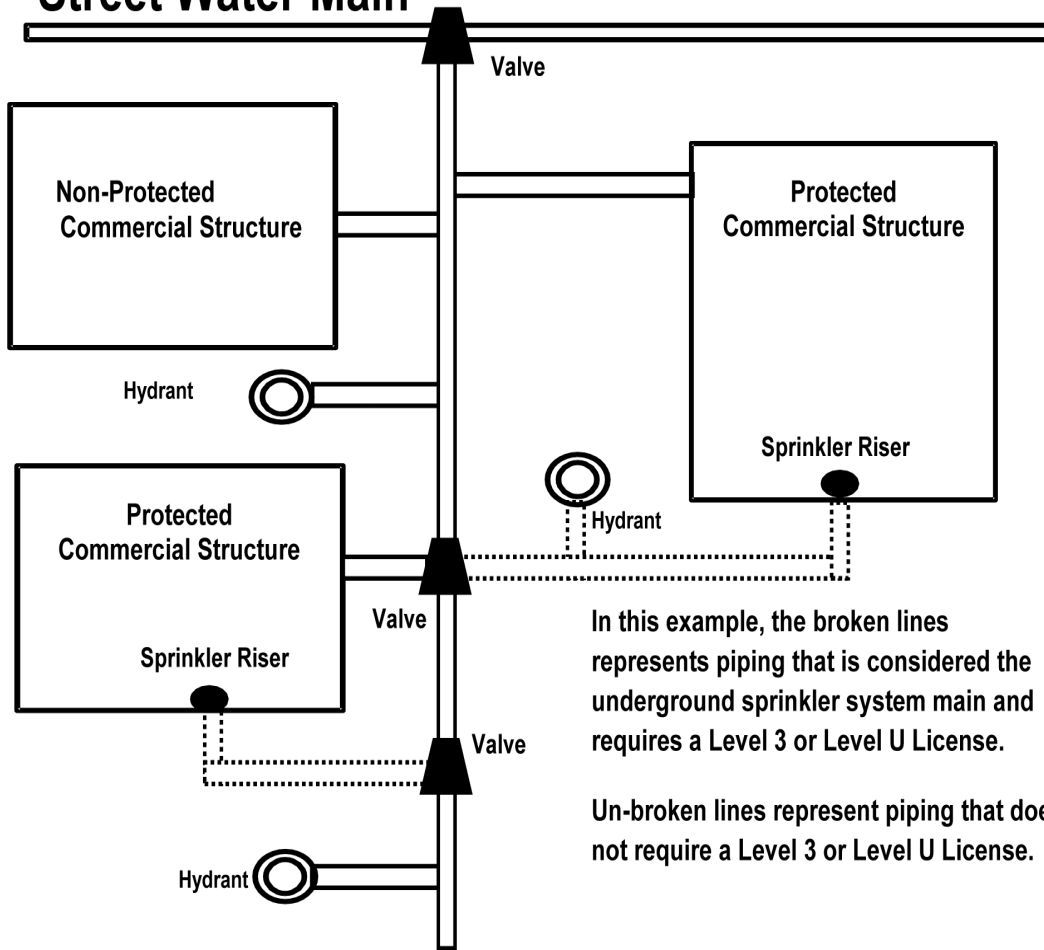
In this example, the broken lines represents piping that is considered the underground sprinkler system main and requires a Level 1, 2, 3, or Level U License.

Un-broken lines represent piping that does not require a Level 1, 2, 3, or Level U License.

For NFPA 13R Systems there are other options for the water connection such as with either a multipurpose piping sprinkler system or a passive purge system.



Commercial Example Street Water Main



(29) "Violation" means any action, general or specific, inconsistent with the intent and letter of chapters 18.160 and 18.270 RCW and shall be further defined as:

- (a) "~~(Minimal)~~ Level 1 violation" means a ~~((Type I))~~ violation which poses a ~~((minor))~~ minimal hazard or threat to life and property in the event of a fire.
- (b) "~~(Moderate)~~ Level 2 violation" means a ~~((Type II))~~ violation which poses a significant hazard or threat to life or property in the event of a fire.
- (c) "~~(Severe)~~ Level 3 violation" means a ~~((Type III))~~ violation which poses a substantial hazard or threat to life or property in the event of a fire.

~~("Wet pipe sprinkler system" means a sprinkler system employing automatic sprinklers attached to a piping system containing water and connected to a water supply so that water discharges immediately when any sprinkler is opened by heat from a fire.)~~

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

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-015 Compliance. (1) Who needs to comply with these rules? All fire protection sprinkler system contractors, certificate ~~((of competency))~~ holders, or trainees, ~~((designing, installing, inspecting, testing or maintaining))~~ who design, install, inspect, test, or repair, fire protection sprinkler systems or any part of such a system ~~((shall))~~ will comply with the provisions of this ~~((regulation))~~ chapter.

~~((EXCEPTIONS:))~~

(1)) (2) Who is exempt from complying with this chapter?

~~((a))~~ (a) Federal, state, and local government employees, or insurance inspectors when acting in their official capacities.

~~((2))~~ (b) A person ~~((or organization))~~ acting under court order.

~~((3))~~ (c) A person ~~((or organization that))~~ who sells or supplies products or materials to a licensed ~~((fire protection sprinkler system))~~ contractor.

~~((4))~~ (d) A registered professional engineer in the state of Washington acting solely in a professional capacity.

~~((5))~~ (e) A person issued a certificate of competency by the Washington state department of labor and industries, under chapter 18.106 RCW, as a ~~((journeyman))~~ journey-level or residential specialty plumber or supervised plumber trainee installing a residential network fire protection sprinkler system connected to potable water who works for a contractor as defined ~~((herein))~~ by WAC 212-80-010(4) of this chapter.

~~((6))~~ (f) An owner ~~((/))~~ or occupier of a single-family residence performing his or her own installation in that residence. It is the intent of this subsection that builders or contractors will not install their own sprinkler systems in single-family residences under their ownership ~~((which))~~ that they plan to sell, lease, or rent.

~~((7-A))~~ (g) Full-time employee, or owner of a facility who is qualified to the satisfaction of the ~~((local))~~ authority having jurisdiction to perform ~~((inspection and testing of))~~ fire protection sprinkler ~~((systems))~~ work in said facility.

~~((8))~~ (h) An employee of a licensed electrical contractor installing or testing only the electronic signaling devices of a fire sprinkler system.

~~((9))~~ (i) A person ~~((, licensed by the))~~ who inspects, field tests, maintains, or repairs backflow prevention assemblies installed on potable water supplies to fire sprinkler systems and who is certified as a:

(i) Backflow assembly tester by the Washington state department of health, under chapters 70.119 RCW and 246-292 WAC ~~((, as a certified backflow assembly tester, performing testing and maintenance of backflow assemblies.~~

~~((10))~~ A person licensed by the Washington state department of health, under chapter 246-292 WAC, as a certified backflow assembly tester, and also licensed by the); or

(ii) Backflow specialty plumber by the Washington state department of labor and industries, under chapters 18.106 RCW ~~((, as a backflow specialty plumber performing repairs of backflow assemblies in accordance with chapter 246-290 WAC))~~ and 296-400A WAC, when repairing backflow prevention assemblies within a building.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-018 License and certification requirements. (1) **Fire protection sprinkler contractors,** only a ~~((company or individual licensed as a fire protection sprin-~~

~~ker systems))~~ licensed contractor, who has at least one ~~((designer))~~ certificate holder on staff certified to license level consistent with the contractor's license, by the ~~((chief of the Washington state patrol, through the director of fire protection,))~~ director, can bid, offer to bid, contract, or perform the designing, installation, inspection, testing, maintenance, ~~((and/or servicing))~~ or repair of a NFPA fire protection sprinkler system(-

EXCEPTIONS: A company or individual licensed as an inspection and testing contractor, whose staff performing the work of inspection and/or testing of a fire protection sprinkler system have all been certified by the chief of the Washington state patrol, through the director of fire protection, as described in this chapter, can bid, offer to bid, contract, or perform only the testing and inspection of a fire protection sprinkler system – excluding preaction, deluge, or foam systems or systems with fire pumps.)

or any part of such a system based on the level of the contractor license. The following levels will apply to contractor licenses issued by the director:

(a) **Level 1 contractor license - NFPA 13D,** and underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25) for NFPA 13D.

(b) **Level 2 contractor license - NFPA 13D or NFPA 13R** and underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25) for NFPA 13D or NFPA 13R.

(c) **Level 3 contractor license - NFPA 13D, NFPA 13R, NFPA 13 systems,** or underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25).

(d) **Level U contractor license –** Specialized license for underground work (NFPA 24) only.

(e) **Level I&T (inspection and testing) contractor license -** Specialized license for inspection and testing work (NFPA 25). This license level allows for inspection or testing of a NFPA 13D, NFPA 13R, or NFPA 13, wet and dry pipe fire protection sprinkler system, provided that the:

(i) Inspection and testing technician must limit his or her work on the fire protection sprinkler system to the contractor's license level; and

(ii) Testing and maintenance of fire protection sprinkler systems such as preaction, deluge, foam or fire pumps, will be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump.

Chart 1: Fire Protection Sprinkler Contractors

<u>Level of Contractor License</u>	<u>Standard Defining Work to be Performed</u>				
	<u>NFPA 13D</u>	<u>NFPA 13R</u>	<u>NFPA 13</u>	<u>NFPA 24</u>	<u>NFPA 25</u>
<u>Level 1 Contractor One- and two-family dwellings and manufactured homes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>Yes</u>	<u>Yes</u> (See WAC 212-80-018 (e)(i))

<u>Level of Contractor License</u>	<u>Standard Defining Work to be Performed</u>				
	<u>NFPA 13D</u>	<u>NFPA 13R</u>	<u>NFPA 13</u>	<u>NFPA 24</u>	<u>NFPA 25</u>
<u>Level 2 Contractor Residential Occupancies Up To and Including Four Stories in Height</u>	Yes	Yes	No	Yes	Yes (See WAC 212-80-018 (e)(i))
<u>Level 3 Contractor All Types of Structures</u>	Yes	Yes	Yes	Yes	Yes (See WAC 212-80-018 (e)(i))
<u>Level U Contractor Underground</u>	No	No	No	Yes	No
<u>Level I&T Inspection and Testing Contractor</u>	No	No	No	No	Inspection/Testing Only (See WAC 212-80-018 (e)(ii))

(2) **Fire protection sprinkler system certification** – Only a certificate holder may prepare layout drawings or install, inspect, test, maintain, or repair a fire protection sprinkler system or any part of such a system based on his or her design certification level.

(a) **Design certification** - The following levels will apply to design certifications issued by the director:

(i) **Level 1 design certification** - NFPA 13D, and underground work (NFPA 24) or inspection, testing, and maintenance (NFPA 25) for NFPA 13D.

(ii) **Level 2 design certification** - NFPA 13D or NFPA 13R, and underground work (NFPA 24) or inspection, testing, and maintenance (NFPA 25) for NFPA 13D or NFPA 13R.

(iii) **Level 3 design certification** - NFPA 13, NFPA 13R, or NFPA 13D, underground work (NFPA 24), and inspection, testing, and maintenance (NFPA 25) for NFPA 13D, NFPA 13R, and NFPA 13.

(b) **Specialized certifications** - The following level will apply to specialized certifications issued by the director:

(i) **Level U certification** - NFPA 24; supervise the installation, inspection, and testing of the underground fire protection sprinkler underground piping.

(ii) **Level ITT - Inspection and testing technician** – NFPA 25 for inspection or testing of a NFPA 13D, NFPA 13R, or NFPA 13, wet and dry pipe fire protection sprinkler. The inspection and testing technician must limit his or her work to the inspection and testing contractor's license level under subsection (1)(e) of this section.

Chart 2: Fire Protection Sprinkler Certifications

<u>Level of Certificate Holder – See Note (1)</u>	<u>Standard Defining Work That May Be Performed</u>				
	<u>NFPA 13D</u>	<u>NFPA 13R</u>	<u>NFPA 13</u>	<u>NFPA 24</u>	<u>NFPA 25</u>
<u>Level 1 Design Certification</u>	Yes	No	No	Yes (NFPA 13D Systems Only)	No
<u>Level 2 Design Certification</u>	Yes	Yes	No	Yes (NFPA 13D and/or NFPA 13R Systems Only)	No
<u>Level 3 Design Certification</u>	Yes	Yes	Yes	Yes	No
<u>Level U Design Certification</u>	No	No	No	Yes	No
<u>Level ITT Design Certification</u>	No	No	No	No	Yes See subsection (1)(e) of this section for exceptions

Chart 3: Certificate Level Required for Level of License

<u>Contractor Level</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>U</u>	<u>I&T</u>
<u>Building Type</u>	<u>One- and two-family dwellings and manufactured homes</u>	<u>Dwellings up to and including four stories in height</u>	<u>All dwellings and commercial or high occupancy facilities</u>	<u>Dedicated underground fire service main of a water based fire protection system</u>	<u>Inspection, testing, and maintenance of water based fire protection systems</u>
<u>Certificate Holder Level Needed to Qualify for License</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>U</u>	<u>ITT</u>

(3) May a person who has two levels of certification as provided by subsection (2) of this section work for two different licensed contractors if the person only uses one type of certification for each licensed contractor? No. RCW 18.160.040(10) prohibits a certificate holder from working for more than one licensed contractor.

(4) May a contractor obtain a fire protection sprinkler system license if the contractor employs only sprinkler fitters? No. A sprinkler fitter may only install piping from approved plans with a design certification.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-023 Authority having jurisdiction. (1) Does a fire protection sprinkler system contractor need to obtain approval from the authority having jurisdiction? Yes. The fire protection sprinkler systems ~~((shall meet the))~~ contractor must obtain approval ~~((of))~~ from the authority having jurisdiction. ~~((This includes))~~ The authority having jurisdiction must approve plans, specifications, calculations, contractor's materials and test certificates, and final approval. The authority having jurisdiction may conduct an approved flow test of heads as part of the approval for 13D fire protection sprinkler systems.

(2) Are there circumstances when the authority having jurisdiction is the director? Yes. In certain types of occupancies the authority having jurisdiction may be the ~~((chief of the Washington state patrol, through the director of fire protection,))~~ director and the building ~~((and/or))~~ or fire official of the city or county in which the installation is located. Generally, these dual responsibilities occur in health care facilities, transient accommodations, and day care facilities. In matters concerning compliance with chapters 18.160 and 18.270 RCW, or this chapter, the director will be considered the authority having jurisdiction.

(3) Who has the responsibility to determine which agency is the authority having jurisdiction? It is the responsibility of the licensed contractor or certificate ~~((of competency))~~ holder ~~((to ascertain which agency or agencies have jurisdiction))~~. If there is a question ~~((of))~~ of which agency is the authority having jurisdiction, the licensed contractor or certificate ~~((of competency))~~ holder should contact the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection))~~.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-033 Posting requirements—License, certificates, and license number. (1) What are the posting requirements for the fire protection sprinkler system contractor's license and employees' certificate? All licenses and certificates must be posted as follows:

(a) Each license and certificate issued under chapter 18.160 RCW must be posted in a conspicuous place in the licensed contractor's place of business.

(b) For certificates issued under chapter 18.270 RCW, the certificate holder must be in possession of his or her wallet card and display it upon request to the authority having jurisdiction.

(c) All bids, advertisements, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's license number.

(d) All inspection and testing certificates, documentation, or other such records of work must have affixed to them:

(i) The inspection and testing technician certificate number;

(ii) The signature of the inspection and testing technician; and

(iii) The date of signature.

(2) Failure to comply with this section constitutes a level 1 violation for each occurrence.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-038 Municipality, county, or state regulations. (1) ((Nothing in this regulation limits the power of a)) Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state to require persons engaged in the sprinkler trade to obtain a permit? No. The municipality, county, or state ~~((to))~~ regulates the quality and character of work ~~((performed by contractors))~~ through a system of permits, fees, and inspections which are designed to assure compliance with and aid in the implementation of state and local building laws or to enforce other local laws for the protection of the public health and safety.

(2) ~~((Nothing in this regulation limits the power of))~~ **Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state, to require those**

engaged in the sprinkler trade to obtain a permit? No. The municipality, county, or ~~((the))~~ state ~~((the))~~ may adopt any system of permits requiring submission to and approval by the municipality, county, or the state of layout drawings and specifications for work to be performed by contractors before commencement of the work.

(3) Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state, to require licensing or certification apart from the requirements provided by chapter 18.160 RCW or this chapter? Yes. A municipality, county, or state may not enact a regulation or requirement to require any licensing or certification apart from the requirements provided by chapter 18.160 RCW and this chapter unless the program was in place before 1991.

(4) Are permits or permission from the authority having jurisdiction required before performing sprinkler work? Yes. Licensed contractors and certificate holders must comply with the authority having jurisdiction's requirements to obtain permits or permission before the installation, repair, alteration, or addition of a fire protection sprinkler system. Failure to comply with this section constitutes a level 2 violation.

(a) Except as provided by (b) of this subsection, when a licensed contractor or certificate holder submits a bid to work on a fire protection sprinkler system, the licensed contractor or certificate holder does not need to obtain permits or permission from the authority having jurisdiction.

(b) The licensed contractor or certificate holder must verify whether a permit or permission is required from the authority having jurisdiction before installing, repairing, altering, adding, or removing any fire protection sprinkler system.

(5) Is an authority having jurisdiction required to verify that the contractor's license and certificate of competency stamp are valid? Yes. The authority having jurisdiction's official authorized to issue building or other related permits ~~((shall))~~ must ascertain that the fire protection sprinkler system contractor is duly licensed by requiring evidence of a valid fire protection sprinkler system contractor's license and a valid certificate of competency stamp consistent with the contractor's license.

~~((4))~~ This regulation applies to any fire protection sprinkler system contractor performing work for any municipality, county, or the state.

~~((5))~~ (6) Does this regulation apply to a fire protection sprinkler system contractor performing work for any municipality, county, or state? Yes. Officials of any municipality, county, or the state are required to determine compliance with this ~~((regulation))~~ chapter before awarding any contracts for the installation, inspection, testing, maintenance, repair, service, alteration, fabrication, or addition of a fire protection sprinkler system.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-048 Subcontracting. ~~((Subcontracting of any work under the purview of chapter 18.160 RCW involving unlicensed contractors is strictly prohibited and a viola-~~

~~tion of chapter 18.160 RCW.))~~ (1) When is it not permissible to subcontract fire protection sprinkler system work?

(a) Subcontracting work on a fire protection sprinkler system is not permitted:

(i) If the subcontractor does not have a current fire protection sprinkler system contractor's license consistent with the level of work performed on the fire protection sprinkler system; or

(ii) If the inspection and testing work is contracted to a contractor licensed by the department of labor and industries, but not a licensed fire protection sprinkler system contractor.

(b) Failure to comply with this section constitutes a level 3 violation.

(2) When is subcontracting or contracting of fire sprinkler protection system work permitted? Subcontracting of any fire sprinkler protection system work is permissible:

(a) When a licensed general contractor bids on a project that involves a fire protection sprinkler system. All subcontracting by a licensed general contractor for fire sprinkler work must be performed by a licensed fire protection sprinkler system contractor; or

(b) When the subcontractor is a licensed fire protection sprinkler system contractor and licensed at a level consistent with the work performed on the fire protection sprinkler system.

FIRE PROTECTION SPRINKLER SYSTEM CONTRACTOR

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-053 Application for licensed fire protection sprinkler system contractor. (1) What are the prerequisites to apply for a fire protection sprinkler system contractor license? Applicants seeking a fire protection sprinkler system contractor's license must:

(a) Register the company structure with the secretary of state (www.sos.wa.gov), RCW 23B.01.200;

(b) Submit a master business application with the department of licensing (www.dol.wa.gov) or through the department of labor and industries (www.lni.wa.gov) and receive a unified business identifier number and twelve digit contractor number;

(c) Obtain a federal tax number from the Internal Revenue Service (www.irs.gov); and

(d) Register as a general or specialty contractor with the department of labor and industries under chapter 18.27 RCW.

(2) Once the prerequisites are met, how do you get licensed as a fire protection sprinkler contractor? To become a licensed ~~((fire protection sprinkler system))~~ contractor under this ~~((regulation))~~ chapter, a person ~~((or firm))~~ must ~~((comply with the following))~~:

~~((1))~~ (a) Be or have in his or her full-time employ a holder of a valid certificate ~~((of competency))~~ whose level is consistent with the license level the contractor is applying for as provided by WAC 212-80-018. If the certificate holder is not certified when the fire protection sprinkler system con-

tractor submits an application for licensing, the certificate holder's application must be submitted at the same time.

~~((2))~~ ~~Make~~ (b) Submit an application to the director ~~((of fire protection))~~ on forms provided ~~((and))~~ for the level of fire protection sprinkler system contractor license. The applicant must complete and provide to the director:

- (i) Initial application;
- (ii) Contractor license background;
- (iii) Affidavit of compliance for licensing; and
- (iv) Bond or assignment of deposit.

(c) Pay the fees required under WAC 212-80-073 for the applicable level of license.

~~((3))~~ (d) Meet the bonding requirements of WAC 212-80-078.

~~((4))~~ Be licensed as a contracting company in the state of Washington by (e) Provide the business name registered with the department of labor and industries and ~~((possess))~~ provide the twelve digit alphanumeric business license number assigned by that agency.

(3) All information submitted for a fire protection sprinkler system contractor license must be true and accurate.

(4) Failure to comply with this section constitutes a level 3 violation.

(5) If the director finds that information or documents submitted by an applicant is false, misleading or has been altered in an effort to meet the requirements, the director will revoke the license pursuant to WAC 212-80-205.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-058 Fire protection sprinkler system contractor license not transferable. (1) Is a fire protection sprinkler system contractor's license transferable between companies? No. A license issued under this ~~((regulation))~~ chapter is not transferable.

~~((EXCEPTIONS:))~~

~~Should a))~~ (2) If a currently licensed fire protection sprinkler system contractor merges or forms another company, can the license be reissued to a newly formed or incorporated company? If a currently licensed ~~((fire protection sprinkler))~~ contractor merges or forms another company, that license can be reissued to the newly formed ~~((/))~~ or incorporated company provided:

~~((1))~~ (a) The principal officers of the licensed company remain the same;

~~((2))~~ (b) The company continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;

~~((3))~~ (c) The company continues to perform fire protection sprinkler system contractor work as defined by chapter 18.160 RCW;

~~((4))~~ (d) The company employs certificate ~~((of competency))~~ holders of the appropriate levels; and

~~((5))~~ (e) The company meets the criteria necessary for licensing as a fire protection sprinkler contracting company as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-063 Contractor responsibilities, ~~((design))~~ certificate ~~((of competency))~~ holder employment. (1) What are the requirements of the fire protection sprinkler system contractor regarding the employed certificate holder(s)? A Level 1, 2, or 3 fire protection sprinkler system contractor ~~((shall))~~ must have at least one full-time ~~((design))~~ certificate ~~((of competency))~~ holder, consistent with the license level as provided by WAC 212-80-018, employed to conduct business.

(2) ~~((If a design certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, and the contractor has no other design certificate of competency holder on staff, the))~~ **What happens if the licensed contractor no longer employs a certificate holder?**

(a) From the date of separation of the certificate holder, the contractor ~~((shall))~~ will have six months or until the expiration of the current license, whichever occurs last, to submit a new application. In order to be issued a new license, the contractor ~~((shall identify))~~ must employ a new ~~((design))~~ person (either as owner or full-time employee) with the appropriate certificate ~~((of competency holder who, at the time of application, shall be either an owner or full-time employee of that fire protection sprinkler business.~~

(3) If such application is not received by the chief of the Washington state patrol, through the director of fire protection and a new license issued within the allotted time, the chief of the Washington state patrol, through the director of fire protection, shall revoke the license of the fire protection sprinkler system contractor.

(4) The fire protection sprinkler system contractor may ~~only complete~~ level consistent with the contractor's license level as provided by WAC 212-80-018.

(b) The licensed contractor must notify the director of the loss of the primary design certificate holder within thirty calendar days. For the purposes of this subsection, thirty calendar days commence on the certificate holder's last day of employment for compensation. The licensed contractor's failure to notify the director:

(i) Within thirty calendar days is a level 1 violation.

(ii) Within sixty calendar days is a level 2 violation.

(iii) After one hundred eighty calendar days is a level 3 violation.

(c) A fire protection sprinkler system contractor may renew a license without employing a design certificate holder if the six-month period crosses into a new license year and all appropriate fees are paid at the time of renewal. During the period in which the licensed contractor does not have a certificate holder, the licensed contractor must limit work on fire protection sprinkler systems to:

(i) Completing the active phase of existing work in progress which has been approved by the authority having jurisdiction, and may not receive new approvals from the authority having jurisdiction without a design certificate holder's number on the documents~~((:))~~; or

(ii) Continuing installation ~~((can continue))~~ on approved design plans, however, the contractor's material and test certificate for the system must be stamped by a certificate ~~((of~~

competency)) holder in the full-time employ of the installing contractor.

(d) If a contractor fails to employ a design certificate holder as required in this chapter, and the director has renewed the license, the director will suspend the contractor's license pursuant to WAC 212-80-205. The suspension will remain in effect until the contractor has a full-time design certificate holder or a hearings officer denies the director's petition to suspend the license.

(e) When a licensed contractor no longer employs a design certificate holder, and the contractor has not hired another design certificate holder, the contractor may not bid on the design, installation, or repair of a fire protection sprinkler system, or any part of such system, that requires work inconsistent with the previously employed design certificate holder's level.

(f) Any contractor that uses a current or former employee's certification stamp on any technical drawings not prepared by the certificate holder is in violation of this chapter.

(g) Failure to comply with (c) through (f) of this subsection constitutes a level 3 violation.

(3) What happens when a Level U or I&T licensed contractor no longer employs a Level U or ITT certificate holder?

(a) The licensed contractor is prohibited from continuing the supervision of underground fire sprinkler pipe installation and inspection, testing, and maintenance, of fire protection sprinkler systems. Failure to comply with this subsection constitutes a level 3 violation and the director may summarily revoke the contractor's license.

(b) The contractor must immediately cease bidding on or starting any sprinkler work without the appropriate specialty certificate holder.

(c) The contractor must notify the director within thirty days after the specialty certificate holder's last day of employment for compensation. Failure to comply with this subsection constitutes a level 2 violation and the director may suspend the contractor's license pursuant to WAC 212-80-205.

(4) What are the responsibilities of the fire protection sprinkler system contractor regarding the employed certificate holders? The contractor is responsible for the work and actions of its employees regardless of the contractor's knowledge of any wrongdoing. The director may refuse to issue or renew a license to engage in the fire protection sprinkler system business for any of the reasons listed in WAC 212-80-205. The director may suspend or revoke the license or the certificate holder's certificate to engage in the fire protection sprinkler system business for any of the reasons listed in WAC 212-80-205.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-068 License renewals. (1) When are fire protection sprinkler system contractor licenses required to be renewed? All licensed fire protection sprinkler system contractors desiring to continue to be licensed ((shall secure from the chief of the Washington state patrol,

through the director of fire protection, prior to)) must renew their license before January 1 of each year ((a renewal license upon payment of the fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(2)). The application for renewal ((shall)) must be made upon a form prescribed by the ((chief of the Washington state patrol, through the)) director ((of fire protection, and the license holder shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

(3) Failure of any license holder)). Any contractor not wishing to renew their license at the beginning of the year should notify the director of the intention not to renew.

(2) What happens if the contractor does not renew its license by the expiration date? A licensed contractor that fails to secure ((his or her)) renewal of the license ((within sixty days after)) by the expiration date ((shall constitute sufficient cause for the chief of the Washington state patrol, through the director of fire protection, to suspend the license.

(4) The chief of the Washington state patrol, through)) will:

(a) Not execute contracts for the design, installation, inspection, testing, maintenance or repair of fire protection sprinkler systems or any part of such a system in the state of Washington.

(b) Submit a new license application pursuant to WAC 212-80-053 to obtain a fire sprinkler protection system contractor license.

(3) Are there reasons why the director would not renew a fire protection sprinkler system contractor license? Yes. The director ((of fire protection, may restore)) will not renew a license that has been suspended by the director, or if the general or specialty license issued by the department of labor and industries has been suspended or revoked.

(4) When will the director not restore a fire protection sprinkler system contractor's suspended license? In addition to other provisions of this ((regulation)) chapter, any of the following will constitute cause for the ((chief of the Washington state patrol, through the)) director ((of fire protection)), not to restore a license that has been suspended:

- (a) Nonreceipt of payment of all delinquent fees;
- (b) Nonreceipt of a late charge and/or application fee;
- (c) Failure to comply with the bonding requirements of chapter 18.160 RCW; ((and)) or
- (d) Failure to obtain or show evidence of having a full-time employee certified as a ((design)) certificate ((of competency)) holder of the appropriate level as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-073 ((Prorated)) Fire protection sprinkler system contractor license fees. (1) Initial application fee is one hundred dollars only charged once when a person makes the initial application for any fire protection sprinkler system contractor license.

(2) Annual license fee is paid by the contractor when:

- (a) Submitting the application for a license; or

(b) Renewing the fire sprinkler system license. The annual license fees for each contractor license level are:

<u>Level 1</u>	<u>\$100</u>
<u>Level 2</u>	<u>\$300</u>
<u>Level 3</u>	<u>\$1,500</u>
<u>Level U</u>	<u>\$1,500</u>
<u>Level I&T</u>	<u>\$1,000</u>

(3) Except as provided by (b) of this subsection, the ((initial)) annual license fee ((shall)) as provided by subsection (2)(a) of this section will be prorated based upon the portion of the year such license is in effect((- This is)), provided that:

(c) The prorated fees are as follows:

Fire Sprinkler System Contractor Initial Prorated License Fees					
Month	1	2	3	U	I&T
January	\$100.00	\$300.00	\$1,500.00	\$1,500.00	\$1,000.00
February	\$92.00	\$275.00	\$1,375.00	\$1,375.00	\$920.00
March	\$83.00	\$250.00	\$1,250.00	\$1,250.00	\$830.00
April	\$75.00	\$225.00	\$1,125.00	\$1,125.00	\$750.00
May	\$67.00	\$200.00	\$1,000.00	\$1,000.00	\$670.00
June	\$58.00	\$175.00	\$875.00	\$875.00	\$580.00
July	\$50.00	\$150.00	\$750.00	\$750.00	\$500.00
August	\$42.00	\$125.00	\$625.00	\$625.00	\$420.00
September	\$33.00	\$100.00	\$500.00	\$500.00	\$330.00
October	\$25.00	\$75.00	\$375.00	\$375.00	\$250.00
November	\$17.00	\$50.00	\$250.00	\$250.00	\$170.00
December	\$8.00	\$25.00	\$125.00	\$125.00	\$80.00

(4) Certificate fees are nonrefundable once the director has issued the certificate.

(5) The director will invoice the annual license fees for renewal to the contractor and the certificate holders. Contractors may receive invoices for the certificate holders they employ.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-078 Contractor surety bonds. (1) ((The chief of the Washington state patrol, through the director of fire protection, shall not issue a license under this regulation unless:)) **Is the surety bond required by the department of labor and industries acceptable to the director for issuing a fire protection sprinkler system contractor license? No. A fire protection sprinkler system contractor must have a separate bond conditioned to compensate third-party losses caused by the acts of the contractor's principal or the principal's servant, officer, agent, or employees, in conducting the business registered or licensed under this chapter as follows:**

(a) The annual license fee is allowed to be prorated only once in the history of the company.

((EXCEPTIONS: Any contracting company who attempts to license as a fire sprinkler contracting company after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual licensing fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for unlicensed operation(s).))

(b) When the director finds that a contractor performed work covered by this chapter and chapter 18.160 RCW, the contractor must pay the full annual licensing fees, in addition to any penalties assessed by the director for unlicensed operation(s).

(a) ((The fire protection sprinkler system contractor, to be licensed as a)) Level 3 or Level "U" fire protection sprinkler system contractor, must file((s)) with the ((chief of the Washington state patrol, through the)) director ((of fire protection,)) a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of ten thousand dollars((- conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation)); or

(b) ((The fire protection sprinkler system contractor, to be licensed for)) Level 1 ((and/or)) or Level 2 systems or a contractor to be licensed as an inspection and testing contractor, must file((s)) with the ((chief of the Washington state patrol, through the)) director ((of fire protection,)) a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of six thousand dollars((- conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation)).

SURETY BOND REQUIREMENT CHART

Level	1	2	3	U	I&T
Building Type By NFPA Standard	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25

<u>Level</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>U</u>	<u>I&T</u>
Bond Amount	\$6,000	\$6,000	\$10,000	\$10,000	\$6,000
This is a separate bond from the one obtained to license with L&I.					

(2) Can another type of security bond be used other than the surety bond? Yes. Upon approval by the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection, property or))~~, cash or other security may substitute for a surety bond provided the value matches the appropriate level of bonding required ~~((for the level of work to be performed.))~~ under subsection (1) of this section and the following conditions are met:

(a) The value of property ~~((shall))~~ must be determined by an appraiser selected by the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection.))~~ and all appraisal fees ~~((shall))~~ will be paid by the fire protection sprinkler system contractor.

(b) The cash or other security substitute will be released one year after the expiration of the fire protection system contractor license issued by the director provided that there are no claims against the bond.

(3) What notice is required for cancellation of a bond? A cancellation of a surety bond or insurance policy is effective thirty days after the director receives the cancellation notice or upon the cancellation date as specified by the surety company whichever occurs first. The cancellation notice must be sent to the director by certified or registered mail and contain the following information in this order:

(a) The name of the contractor, exactly as it appears on the contractor's license;

(b) The contractor's license number (as issued by the department of labor and industries);

(c) The contractor's business address;

(d) The number of the bond or insurance policy that is to be canceled; and

(e) The effective date of the bond that is to be canceled.

(4) What happens if the bond is canceled or expires without renewal? If the surety company cancels or revokes the bond or a withdrawal of the surety company from the bond occurs, the director will suspend both the fire protection sprinkler system contractor license issued to the contractor, and the certifications of employee(s) employed by the contractor pursuant to WAC 212-80-205. The director may rescind the suspension action when the contractor files a new bond or reinstatement notice. The director will provide written notice to both the contractor and certificate holders of the license or certificate suspension action. This subsection does not apply to the certificates of commercial or residential installers under chapter 18.270 RCW.

**FIRE SPRINKLER CERTIFICATE ~~((OF COMPE-~~
~~TENCY))~~ HOLDER**

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-083 Stamps for NFPA 13D, 13R, and 13 systems certificate holders. ~~((+))~~ Certificate holders for Level 1, Level 2, Level 3, and Level U will obtain a stamp

each certification year to affix on all sprinkler related documents as provided by this chapter.

(1) Will the stamp come with my certification? When the director issues a certificate, the director will provide a Level 1, Level 2, Level 3, and Level U certificate holder the information necessary to order a stamp. The cost of the stamp and obtaining a stamp will be the responsibility of the certificate holder.

(2) What is required on the stamp? The stamp will conform to the following appearance specifications:

(a) The name and certification number of the certificate holder;

(b) The name and license number of the certificate holder's employer;

(c) The expiration date of the current certificate; and

(d) A place for the signature of the design certificate holder and the date of the signature.

(3) When is the stamp required to be used? An original stamp and signature must appear in an easily recognizable manner on:

(a) Sprinkler system plans, calculations, and contractors' materials and test certificates submitted to the authority having jurisdiction ~~((shall be stamped pursuant to subsection (3) of this section)).~~

~~((2))~~ (b) At least one set of approved plans and calculations, containing information as specified in subsection ~~((3))~~ (1) of this section, ~~((shall))~~ must be maintained on the job site while the work is being performed.

~~((3))~~ Stamps shall be issued by the chief of the Washington state patrol, through the director of fire protection, and shall contain the name and certification number of the design certificate of competency holder, name and license number of the holder's employer, the expiration date of the current certificate, a place for the signature of the design certificate of competency holder and the date of the signature. On all plans the stamp shall be easily recognizable and visible.

(4) An original stamp and signature shall appear on each page of plans, on)

(c) The cover sheet of hydraulic calculations ~~((and))~~.

(d) On all test certificates for fire protection sprinkler systems submitted to the authority having jurisdiction.

~~((5))~~ (4) Plans and calculations for "underground only" portions of fire protection sprinkler systems submitted to the authority having jurisdiction by a ~~((State))~~ Level U licensed fire protection sprinkler contractor ~~((shall))~~ must be stamped by either:

(a) A licensed professional engineer registered in the state of Washington; or

(b) The appropriate level certificate ~~((of competency))~~ holder and the ~~((State))~~ Level U certificate ~~((of competency))~~ holder employed by the submitting contractor.

(5) What are the documentation requirements for inspection and testing technicians? Inspection and testing technicians must affix the certificate number and signature on all bids or documents related to the inspection and testing of a fire protection sprinkler system. The inspection and testing

technician may affix the certificate number by handwriting or digital signature.

(6) Can documentation be provided using an electronic record?

(a) Yes. Electronic records may be submitted provided that:

(i) The electronic record must meet the applicable requirements of chapter 18.160 RCW and this chapter; and

(ii) The signature is an original "wet" signature, written by hand and applied by the identified registrant or a digital signature.

(b) The following guidelines will be used when submitting electronic records:

(i) An electronic stamp may be embedded in an electronic document as part of a template, drawing border, or cover sheet.

(ii) The certificate holder is responsible for ensuring that the stamp is only affixed to documents personally prepared by or under his or her direct supervision.

(iii) If the stamp is combined with a digital signature into a single graphic entity, then it must:

(A) Be affixed by the certificate holder in conjunction with the certificate holder applying his or her digital signature to the document;

(B) Include a scanned image of a "wet" signature; and

(C) Be affixed only to the final documents.

(iv) A digital signature must be affixed by the certificate holder to final documents that are distributed as an electronic record to meet the requirements of this section. The certificate holder must maintain exclusive control of the passwords, private key, or security device that allows access to his or her digital signature.

(7) What are the violations of this section?

(a) A certificate holder altering, forging, or falsifying a certification stamp in order to submit bids or documents related to fire protection sprinkler system plans, calculations, permits, or any other documents that show the stamp being valid, constitutes a level 3 violation.

(b) A certificate holder using a stamp from previous employment with a licensed contractor while employed by another licensed contractor will constitute a level 2 violation.

(c) A certificate holder using an issued stamp from previous employment with a licensed contractor while not currently employed by a licensed contractor will constitute a level 3 violation.

(d) A certificate holder using an expired stamp will constitute a level 3 violation.

(e) A certificate holder stamping documents that have been forwarded to the authority having jurisdiction for approval that were not prepared by the certificate holder or an individual under his or her direct supervision constitutes a level 3 violation.

(f) A certificate holder failing to affix the certificate stamp or inspection testing technician's number and signature on inspection forms constitutes a level 1 violation.

(g) A certificate holder obtaining a certification stamp while not holding a current and valid certificate holder constitutes a level 3 violation.

(8) May a licensed contractor hired by a person who has obtained a building, structure, or property through a

foreclosure process complete the installation using a previous licensed fire protection sprinkler system contractor's design, uncompleted installation, and permit? No. The licensed contractor must submit new plans with the certificate holder's stamp affixed and obtain a new permit from the authority having jurisdiction for work that will be done under the licensed contractor's supervision. The decision to remove piping must be made in consultation with the authority having jurisdiction. The licensed contractor must obtain approval from the authority having jurisdiction for any portion of the fire protection sprinkler system that was not previously inspected and approved by the authority having jurisdiction.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-088 Contractor's materials and test certificates. (1) The ~~((design))~~ certificate ~~((of competency))~~ holder ~~((shall))~~ must complete the contractor's material and test certificate(s), affix his ~~((/))~~ or her certificate ~~((of competency))~~ stamp, and forward the certificate(s) to the authority having jurisdiction.

(2) Contractor's material and test certificate forms ~~((shall))~~ must be of such form as accepted or approved by the ~~((chief of the Washington state patrol, through the director of fire protection))~~ authority having jurisdiction.

(3) ~~((The authority having jurisdiction shall require an approved flow test of heads as part of the approval of NFPA 13R and NFPA 13D fire protection sprinkler systems.~~

(4)) The authority having jurisdiction and the building owner ~~((shall))~~ must retain copies of the contractor's materials and test certificate for a minimum of five years.

(4) The certificate holder will not allow his or her stamp to be used to complete the contractor's materials and test certificate(s) that were not prepared personally by the certificate holder or under his or her direct supervision. Failure to comply with this subsection constitutes a level 2 violation.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-093 Certificate ~~((of competency))~~ holder certification ~~((for Level 1 design, Level U, Level 2, and Level 3)).~~ ~~((To become a certificate of competency holder under this regulation, an applicant must either:))~~ (1) **How do I become a certificate holder? The issuance of a certificate is dependent on employment with a licensed contractor. All applications for a certificate must be submitted with the fire protection sprinkler system contractor's license application. A certificate application will not be processed without the fire protection sprinkler system contractor's license application. All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-80-098 and documentation for the required level of certification as provided by this section.**

(a) For ~~((State))~~ Level 1 design certification, the applicant must:

(i) Have satisfactorily passed with a final score of eighty percent or better an examination administered by the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire~~

protection, or show evidence of passing), or present a copy of a current certificate from the National Institute for Certification in Engineering Technologies (~~element requirements for~~) showing that the applicant has achieved Level 2 certification in the field of water-based fire protection system layout (~~design~~); or

(ii) Be a Washington licensed professional engineer.

(b) For Level 2 design certification, the applicant must:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 2 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

(c) For Level 3 design certification, the applicant must either:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 3 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

~~((2))~~ **(d) For ((State)) Level U certification,** the applicant must have satisfactorily passed with a final score of eighty percent or better an examination administered by the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection))~~.

~~((3))~~ **(e) For inspection and testing technician certification,** the applicant must:

(i) Possess a National Institute for Certification and Engineering Technologies Inspection, Testing and Maintenance Level 2 or Level 3 certification; and

(ii) Perform work consistent with the employing contractor's licensing level.

(f) For journey-level sprinkler fitter certification, the applicant must:

(i) Provide evidence on the forms provided by the director of at least eight thousand hours of trade related fire protection sprinkler system experience in installation and repair;

(ii) Not have more than three thousand hours of experience in residential sprinkler fitting; and

(iii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.

(g) For residential sprinkler fitter certification, the applicant must:

(i) Provide evidence on the forms provided by the director, of at least four thousand hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; and

(ii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.

(h) For journey- or residential-level sprinkler fitter training certification, except as provided by (g)(i) of this subsection, the applicant must:

(i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;

(ii) Remain employed by a licensed contractor to maintain trainee status; and

(iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.

(i) A professional engineer is exempt from certification when acting solely in a professional capacity. ~~((Such))~~ The professional engineer ~~((shall comply with all other requirements of this regulation including payment of fees, completion of the))~~ must:

(i) Be licensed by the department of licensing;

(ii) Obtain a Level 1, Level 2, or Level 3 certificate;

(iii) Properly register with the department of licensing;

(iv) Complete the application process~~(s)~~ for certification provided by WAC 212-80-093;

(v) Pay fees provided by WAC 212-80-073; and ~~((supplying))~~

(vi) Supply the director ~~((of fire protection))~~ with proof that ~~((the applicant))~~ he or she holds a current, valid state of Washington registration as a professional engineer~~((Upon completion of the above requirements, the engineer will be granted an equivalency certificate to that of State Level 3 design certification; or~~

(4) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved the classification. State Level 2 certification requires a minimum certification from the National Institute for Certification in Engineering Technologies of Level 2 in the field of fire protection automatic sprinkler system layout or better. State Level 3 certification requires either Engineering Technician, Level 3 or Senior Engineering Technician, Level 4 in the field of fire protection automatic sprinkler system layout.

(5) The chief of the Washington state patrol, through the director of fire protection, may accept equivalent proof of qualification in lieu of the examination requirements).

~~((6))~~ (2) Proof of competency to the satisfaction of the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ is mandatory.

~~((7))~~ Every applicant for a certificate of competency shall fulfill the requirements established by the chief of the Washington state patrol, through the director of fire protection, under chapters 18.160 and 18.270 RCW.)

Certificate of Competency Holder Requirements				
Certificate of Competency Level	Application Required	Certification or Exam Required	Stamp Issued	Type of work performed by Certificate Holder
Level 1	Yes	NICET Level 2 or Pass an Exam (See (a) of this subsection)	Yes	Designs fire sprinkler systems
Level 2	Yes	NICET Level 2 (See (b) of this subsection)	Yes	Designs fire sprinkler systems

<u>Certificate of Competency Holder Requirements</u>				
<u>Certificate of Competency Level</u>	<u>Application Required</u>	<u>Certification or Exam Required</u>	<u>Stamp Issued</u>	<u>Type of work performed by Certificate Holder</u>
<u>Level 3</u>	<u>Yes</u>	<u>NICET Level 3 or 4 (See (b) of this subsection)</u>	<u>Yes</u>	<u>Designs fire sprinkler systems</u>
<u>Level "U"</u>	<u>Yes</u>	<u>Pass an Exam (See (c) of this subsection)</u>	<u>Yes</u>	<u>Supervises or performs the underground installation of fire sprinkler system piping regardless of the level it will be at the above ground connection, (i.e., Level 1, 2, or 3)</u>
<u>Inspection, Testing Technician (ITT) Employed by an Inspection & Testing Contractor</u>	<u>Yes</u>	<u>NICET Level 2 (See (d) of this subsection)</u>	<u>No</u>	<u>Performs inspection or testing on NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems only</u>
<u>Inspection, Testing Technician (ITT) Employed by a Level 1 or 2 Contractor</u>	<u>Yes</u>	<u>NICET Level 2 (See (d) of this subsection)</u>	<u>No</u>	<u>Performs inspection, testing and maintenance on NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems only</u>
<u>Inspection, Testing Technician (ITT) Employed by a Level 3 Contractor</u>	<u>Yes</u>	<u>NICET Level 2 (See (d) of this subsection)</u>	<u>No</u>	<u>Same as ITT above and includes the testing of other fire protection systems such as preaction, deluge, foam, or fire pump</u>
<u>Journey Sprinkler Fitter</u>	<u>Yes</u>	<u>Pass an Exam (See (e) of this subsection)</u>	<u>No</u>	<u>Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems</u>
<u>Residential Sprinkler Fitter</u>	<u>Yes</u>	<u>Pass an Exam (See (f) of this subsection)</u>	<u>No</u>	<u>Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies</u>
<u>Professional Engineer (P.E.) Licensed in Washington State</u>	<u>No</u>	<u>Licensed with department of licensing</u>	<u>By DOL</u>	<u>Designs fire sprinkler systems</u>

(3) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a level 3 violation.

(4) A violation of this section that involves performing fire protection sprinkler system work:

(a) Without a license or certificate, or with a license or certificate that has been expired for one or more years is a level 3 violation.

(b) With a license or certificate that has been expired for more than ninety days and less than one year is a level 2 violation.

(c) With a license or certificate that has been expired less than ninety days is a level 1 violation.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-098 ((Applications/)) Fees for certificate ((of competency)) holder. ~~((+))~~ Every applicant for a certificate of competency shall apply to the chief of the Washington state patrol, through the director of fire protection, on application forms provided and pay the fees required.

(2) The chief of the Washington state patrol, through the director of fire protection, shall deny renewal of a certificate if the certificate is in revoked or suspended status.

~~((3))~~ There are ~~((two))~~ three separate fees ~~((including the application fee and the certification fee. The))~~ that may apply:

(1) Application fee is fifty dollars only charged once when ~~((an individual))~~ a person makes the initial application for any of the certificates specified in this section. As long as the certificate holder maintains continuous certification, the certificate holder is not required to pay a subsequent application fee.

~~((4))~~ (2) Annual certification fee is fifty dollars paid each year the certificate holder applies for certification renewal. The annual renewal fee:

(a) Is in addition to the initial application fee paid for the initial application; and

(b) Does not apply to journey, residential, or trainee sprinkler fitter certifications.

(3) Prorated fee is the initial certification fee prorated based on the portion of the year the certification is in effect before renewal on January 1st.

(a) Prorated fees ((shall)) are allowed only ((be allowed)) for the initial certificate.

(b) Renewals or reinstatements ((shall)) will not be prorated ((The prorated amount shall be calculated using the number of months remaining in the certification cycle.

(5) Renewal timelines:

(a) Levels 1, 2 and 3 design, Level U installer, and Level HTT certificates shall be renewed annually.

(b) Journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be renewed biannually.

(6) Certificate of competency fees for journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be:

(a) Initial application (one time fee) \$100.00;

(b) Certification and renewal of certification \$100.00;

(c) Reinstatement of certificate (no proration permitted) \$100.00).

~~((7))~~ The prorated fees are as follows:

Annual Certificate Prorated Fees

<u>January</u>	<u>\$50</u>
<u>February</u>	<u>\$44</u>
<u>March</u>	<u>\$40</u>
<u>April</u>	<u>\$36</u>
<u>May</u>	<u>\$32</u>
<u>June</u>	<u>\$28</u>
<u>July</u>	<u>\$24</u>

Annual Certificate Prorated Fees

<u>August</u>	<u>\$20</u>
<u>September</u>	<u>\$16</u>
<u>October</u>	<u>\$12</u>
<u>November</u>	<u>\$8</u>
<u>December</u>	<u>\$4</u>

(4) Certificate fees are nonrefundable once the certificate has been issued.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-108 Certificate ((of competency)) not transferable. (1) Is a certificate transferable to another person? No. A certificate ((of competency)) issued under this regulation is not transferable to another person.

~~((This certification))~~ (2) Is a certificate transferable to another employer? Yes. The certificate can ~~((however;))~~ follow a ~~((person))~~ certificate holder to another employer provided that employer is currently licensed at the appropriate level.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-113 Certificate ((of competency)) holder employment. (1) What are the employment requirements for a certificate holder?

(a) In no case ~~((shall))~~ will a certificate ((of competency)) holder be employed full time by more than one ~~((fire protection sprinkler system))~~ licensed contractor at the same time.

~~((2))~~ (b) If the certificate ((of competency)) holder should leave the employment of the ~~((fire protection sprinkler system))~~ licensed contractor, he or she ~~((shall))~~ will notify the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection;))~~ within thirty days of his or her last day of employment.

~~((3))~~ Should any individual who meets the criteria to be a design certificate of competency holder as defined by this chapter and chapter 18.160 RCW wish to be certified to perform design work only, he or she may request to work as a "FOR DESIGN ONLY" certificate of competency holder. This certification can also be utilized to maintain state certification, as in the case of the State Level U certification.) (2) Are there any exceptions to the employment requirements for a certificate holder? Yes. The following exceptions may apply:

(a) Any current certificate holder for the license and certification year who is no longer employed by a licensed contractor will become "INACTIVE," unless he or she is a journey, residential or trainee sprinkler fitter. An "INACTIVE" certificate will:

(i) Not be issued a physical certificate;

(ii) Not allow the certificate holder to perform any work in the fire protection sprinkler system trade as a certificate holder until the certificate holder is employed by a licensed contractor licensed by the director. When an "INACTIVE" cer-

tificate holder is employed by a licensed contractor the director will reissue a certificate to the certificate holder:

(iii) Expire at the end of the current licensing and certification cycle and cannot be renewed as "INACTIVE."

(b) The "QUALIFIED EXEMPT" certification allows persons who are considered exempt from the licensing or certification requirements of chapter 18.160 RCW and this chapter and not currently working for a licensed contractor, to obtain evidence of qualification while working for an employer who requires a knowledge and skill base of fire protection sprinkler systems.

(i) A "QUALIFIED EXEMPT" certificate:

(A) Will not be used for work under contract.

(B) May be issued to:

(I) An employee of the United States, state or local government, building officials, fire marshals, fire inspectors, or insurance inspectors when acting in their official capacities.

(II) A person who performs maintenance or other duties for an employer, and performs work on only his or her employer's fire protection sprinkler system.

(III) A person who works for an industry ancillary to the fire protection sprinkler system contracting trade that is regulated by chapter 18.160 RCW.

(ii) A "QUALIFIED EXEMPT" certificate holder will:

(A) Bear "QUALIFIED EXEMPT" on the certificate and listing post on the internet and the person's level of certification.

(B) Be issued a physical certificate.

(C) Not be issued a stamp.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-118 Certificate ((of competency)) renewals. (1) ((Level 1, 2, 3, U, or I.T.)) When are certificates required to be renewed?

(a) A certificate ((of competency holders who desire to maintain a current certificate shall, prior to)) must be renewed by January 1st of each calendar year((- apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection)).

((2) Journeyman fitter) (b) Certificates for journey and residential fitters ((certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to)) must be renewed by January 1st of every ((other)) even-numbered year((- apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection. Applications for renewal shall not be made more than ninety days prior to the expiration date of the certificate.

(a) Trainees applying for a journeyman fitter certificate of competency shall provide an affidavit showing a minimum of eight thousand hours in fire protection sprinkler fitting experience on a form prescribed by the director of fire protection.

(b) Trainees applying for a residential fire sprinkler fitter certificate of competency shall provide an affidavit showing

four thousand hours in fire protection sprinkler fitting experience in residential fitting on a form prescribed by the director of fire protection.

(3) Application for renewal forms shall be provided by the chief of the Washington state patrol, through the director of fire protection, upon request, and the certificate holder or trainee shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

(4) The chief of the Washington state patrol, through the director of fire protection, may suspend the Level 1, 2, 3, or I.T. certificate of competency for failure to apply for a renewal certificate of competency within sixty days after the expiration date.

(5) The chief of the Washington state patrol, through the director of fire protection, may upon the receipt of payment of all delinquent fees and a late charge, restore a Level 1, 2, 3, U, or I.T. certificate of competency that had been suspended.

(6) Journeyman sprinkler fitter and residential sprinkler fitter certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to January 1 of every other year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(7)) A sprinkler fitter certificate holder will be sent a renewal form by the director to renew the certificate.

(c) Certificates for sprinkler fitter trainees must be renewed by January 1st of every even-numbered year.

(i) Trainees who have a current certificate will be sent a renewal form by the director to renew their certificate.

(ii) The certificate will not be renewed if the trainee is not currently employed by a licensed contractor.

(d) Failure of a trainee, ((journeyman sprinkler fitter)) journey, or residential sprinkler fitter ((certificate of competency holder,)) to renew ((their)) his or her certificate ((before its expiration date of December 31 of every other year, shall)) will result in ((the applicant having to)) him or her:

((a) File) (i) Filing a new application with the ((chief of the Washington state patrol, through the)) director ((of fire protection,)) on a form provided by the director((-

(b) Pay an examination fee to the chief of the Washington state patrol, through the director of fire protection.

(e)); and

(ii) Successfully ((pass)) passing the written examination required by this chapter.

(2) What happens if the certificate holder does not renew his or her application by the expiration date? Failure of a certificate holder to renew his or her certificate by the expiration date will constitute a break in certification. For certificates that are expired for:

(a) Less than two consecutive calendar years, the certificate holder may renew by submitting a renewal application provided by the director and applicable fees.

(b) Two or more calendar years, the certificate holder must submit a new application with evidence of qualification and applicable fees for a new certificate.

Those who were qualified under the grandfathering process will need to show evidence of qualification meeting the current requirements.

(3) Are there reasons why the director would not renew a certificate? Yes. The director will not renew a certificate if:

(a) The certificate holder is employed by a fire protection sprinkler system contractor who has not submitted for a renewal of its license; or

(b) The certificate is in a revoked or suspended status.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-123 Voluntary relinquishment of certificates ((of competency)). (1) A certificate ((of competency)) holder ((-or trainee-)) may voluntarily relinquish his or her certificate ((of competency)) to the ((chief of the Washington state patrol, through the)) director ((of fire protection. This includes temporary design certificate of competencies that have not been in effect for more than three consecutive and/or accumulative years)).

(2) The relinquishment is effective when the certificate is received by the ((chief of the Washington state patrol, through the)) director ((of fire protection)).

(3) After relinquishing the certificate ((of competency)), he or she ((shall)) will not be known as a certificate ((of competency)) holder or trainee and ((shall)) will desist from the practice thereof.

(4) Within two years from the time of relinquishment of the certificate ((of competency)), he or she may again qualify for a certificate ((of competency)), with the approval of the ((chief of the Washington state patrol, through the)) director ((of fire protection-)) by submission of a renewal application and the payment of the required fee.

(5) If two or more years have elapsed, he or she ((shall)) will return to the status of a new applicant.

((FIRE PROTECTION SYSTEMS INSPECTION AND TESTING CONTRACTOR))

((INSPECTION AND TESTING TECHNICIAN))

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-165 ((Inspection and testing of water based fire protection systems-)) Certificate holder requirements and limitations. ((1) All inspection and testing certificates, documentation, and/or other such records of work shall have affixed to them the inspection and testing technician number as provided by the chief of the Washington state patrol, through the director of fire protection, and shall possess the signature of the inspection and testing technician and the date of signature.

(2) Under no condition shall any employee working for a sprinkler system inspection and testing contractor perform any inspection and testing work on a water based fire protection system unless they possess certification as a competent

inspection and testing technician by the chief of the Washington state patrol, through the director of fire protection.

(3) Wallet cards shall be issued by the chief of the Washington state patrol, through the director of fire protection, and shall contain the name and technician number of the inspection and testing technician, the expiration date of the current certification, a place for the signature of the inspection and testing technician, and the date of the signature.

(4) An original signature shall appear on each page of documentation for all inspection and testing certificates for water based fire protection sprinkler systems conducted by the inspection and testing technician.) **(1) Who is issued a wallet card?** The director issues a wallet card to a person issued a certificate. The card will be kept by the certificate holder. The certificate holder must make the card available for review at any time.

(2) Can the authority having jurisdiction or the director inspect the wallet cards? Yes. The authority having jurisdiction or director may request a certificate holder to display his or her wallet card. Failure to display a wallet card upon request constitutes a level 1 violation.

((REVOCAION OF LICENSE/CERTIFICATE))
ENFORCEMENT AND COMPLIANCE

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-205 Suspension or revocation of licenses or certificates. (1) **Who can suspend or revoke a license or certificate?** The ((chief of the Washington state patrol, through the)) director ((of fire protection-)) may refuse to issue or renew or may suspend or revoke the privilege of a certificate ((of competency)) holder ((as defined in RCW 18.160.101(1) or chapter 18.270 RCW)), or a licensed or unlicensed fire protection sprinkler system contractor to engage in the fire protection sprinkler system business ((of)). The director may establish penalties ((as prescribed by Washington state law for any of the following reasons:)) against a person who violates any provision of chapter 18.160 or 18.270 RCW or any provision of this chapter while he or she is engaged in the design, installation, inspection, testing, maintenance, or repair, of a fire sprinkler system or any part of such system.

(2) What actions result in suspension, revocation or civil penalties against a fire protection sprinkler system contractor licensee or certificate holder?

(a) Gross incompetence ((of)) - The licensed contractor or certificate holder demonstrated he or she does not have the qualifications or ability to perform at the level of license or certificate required to contract or offer to bid on the design, installation, inspection, testing, maintenance, or repair, of a fire protection sprinkler system or any part of such system. For the purpose of this subsection, qualifications mean that the person did not possess or has not possessed a valid certificate to the level required for the work performed.

(b) Gross negligence - The licensed contractor or certificate holder has demonstrated a habitual failure in the preparation of layout drawings, installation, repair, alteration, test-

ing, maintenance, inspection, or addition to fire protection sprinkler systems(-

~~(b) Conviction of a felony.)~~ in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. For the purpose of this subsection, "habitual failure" means that the person has over a period of time committed five violations of chapter 18.160 or 18.270 RCW, or this chapter in separate offenses, or has failed to design or install sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. Violations for gross negligence identified and enforced by the authority having jurisdiction must:

(i) Show a pattern of performance issues or repetitive violations of chapter 18.160 or 18.270 RCW, or this chapter to the director;

(ii) Demonstrate that the pattern of performance issues or repetitive violations have occurred in any jurisdiction within the state of Washington beginning no more than five years from the date the authority having jurisdiction's investigation commences; and

(iii) Provide documentation to show the licensed contractor or certificate holder's gross negligence including, but not limited to:

(A) Correspondence between the licensed contractor or certificate holder and the local authority having jurisdiction that identifies violations of work that do not comply with the applicable standards;

(B) Failed permit or work inspections;

(C) Issued stop work order;

(D) Investigations resulting from a complaint;

(E) Violation notices; or

(F) Issued citations or infractions.

~~(c) ((Fraudulent or)) Dishonest practices ((while engaging in the)) - The licensed contractor or the certificate holder will not engage in dishonest fire protection sprinkler systems business practices that include, but are not limited to:~~

(i) Charging customers for work not performed. When a licensee is suspended, revoked, or denied, as part of a complaint investigation where the licensed contractor or certificate holder received payment for supplies or work not performed and did not return the funds to the person contracting for the service, the director may upon receipt of a renewal application require that the licensed contractor or certificate holder pay restitution as a condition to renew the license.

(ii) Receiving down payments on work that the licensed contractor or the certificate holder is not licensed or certified to perform.

(iii) Implying either verbally or in writing that either the licensed contractor or the certificate holder possesses the appropriate license or certificate to bid on or complete fire protection sprinkler work when he or she does not have that fire protection sprinkler system contractor license or certification level.

(iv) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment contrary to the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(v) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection

sprinkler system or equipment beyond that which the contractor is licensed or certificate holder is certified, regardless of whether or not the work done was in compliance with the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

~~(d) ((Use of false evidence or misrepresentation in an application for a certificate of competency.~~

~~(e))~~ Actions showing an indifference to comply with the fire protection sprinkler system business practices that include, but are not limited to a licensed contractor:

(i) Offering to contract for fire protection sprinkler system work without currently employing a certificate holder.

(ii) Requiring or allowing employees to falsify any sprinkler tags, labels, or inspection reports.

(iii) Permitting ~~((his or her))~~ or requiring a certificate holder to ~~((be used))~~ use his or her certificate in connection with the preparation of any ~~((layout))~~ technical drawings ~~((; installation, testing, maintenance, inspection, or certification of any system when such activity is not))~~ that have not been prepared personally by the certificate holder or under his or her direct supervision, or in violation of this ~~((regulation))~~ chapter.

~~((f))~~ Knowingly violating any provisions of this regulation or chapters 18.160 or 18.270 RCW.

(2) The chief of the Washington state patrol, through the director of fire protection, shall revoke the certificate of a certificate of competency holder, trainee, or a state certified fire sprinkler inspection and testing technician who engages in the fire protection sprinkler system business while the certificate of competency or trainee certificate is suspended.) (c) Any violation of this section constitutes a level 3 violation.

(3) Will a licensed contractor or certificate holder be notified if action is taken against their license or certification? Yes. The licensed contractor or certificate holder will be notified in writing of the denial, suspension, or revocation action.

(4) What is the process for the director to deny, suspend, or revoke a license or certificate? The director may deny, suspend, or revoke a license or certificate under the following process:

(a) The director must give the licensed contractor or certificate holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the license or certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate holder may, within thirty days from the date of the notice of action, request in writing to the director a hearing on the denial, suspension, or revocation of the license or certificate. An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate holder, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of

the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate holder, deny, suspend, or revoke a license or certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a license or certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate holder.

(5) What are the penalties associated with performing fire protection sprinkler system work while a license or certificate is denied, suspended, or revoked?

(a) Any person engaged in the trade of designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler systems or any part of such system while his or her license or certificate is denied, suspended, or revoked, will be issued a level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee or trainee to engage in the trade designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler system or any part of such a system while his or her license or certificate has been denied, suspended, or revoked, will be issued a level three violation.

((CIVIL PENALTIES AND FINES))

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-210 Imposing citations and civil penalties. (1) **Who may issue civil penalties or citations?** The ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ may impose civil penalties ~~((and/or))~~ or fines to any licensed ~~((company or certified individual who))~~ contractor or certificate holder that violates any provision of chapter ~~((s))~~ 18.160 ~~((;))~~ or 18.270 RCW, or this chapter. ~~((Moreover, the chief of the Washington state patrol, through))~~ The director ~~((of fire protection,))~~ may impose the civil penalties ~~((and/or))~~ or fines listed herein to any unlicensed ~~((company))~~ contractor or uncertified ~~((individual))~~ person who operates in the state of Washington as a licensed ~~((company and/or certified individual))~~ fire protection sprinkler system contractor or certificate holder. The director will record all violations.

(2) **When may civil penalties or citations be issued?** The director may issue a citation when an investigation verifies that the fire protection sprinkler system contractor or certificate holder was not in compliance with or otherwise in violation of chapter 18.160 or 18.270 RCW, or this chapter.

(3) **What is a violation?** A violation is an action by a person who engages in the design, installation, inspection,

testing, maintenance, or repair of a fire protection sprinkler system or any part of such a system, and fails to comply with chapter 18.160 or 18.270 RCW, or this chapter.

(4) **Is there a statute of limitations for a violation?** The director must take action on a license or certificate within five years after the violation is reported to the director.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-215 Citations and penalties. (1) ~~((These rules establish the basis and process by which the citations and penalties will be determined and issued for violations of chapters 18.160, 18.270 RCW, and/or chapter 212-80 WAC.~~

(2)) **What citation or penalties may be issued by the director for violations?** The director may at his or her discretion issue either a monetary penalty or take an action against a license or certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type ~~((and instance as defined by this chapter.))~~ as provided by the chart below:

<u>Violation Level</u>	<u>Monetary Penalty Issued</u>	<u>Action Taken Against License and/or Certificate</u>
1	Warning to \$200	<u>License:</u> No action <u>Certificate:</u> No action
2	\$100 to \$500	<u>License:</u> Suspended immediately for remainder of the license year or thirty calendar days, whichever is longer. <u>Certificate:</u> Suspended immediately for remainder of the license year or thirty calendar days, whichever is longer. <u>Certificate:</u> If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.
3	\$500 to \$5,000	<u>License:</u> Suspended immediately for remainder of the license year or ninety calendar days, whichever is longer. <u>Certificate:</u> Suspended immediately for remainder of the license year or ninety calendar days, whichever is longer. <u>Certificate:</u> If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.

(2) What action can be taken against a licensed contractor or certificate holder for repeat violations? If a licensed contractor or certificate holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate holder as a habitual offender and issue either an increased monetary penalty or the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

<u>Violation Level</u>	<u>Monetary Penalty Issued</u>	<u>Violation Level and Action Taken Against License and/or Certificate</u>
1	\$100 to \$500	Evidence of three or more level 1 violations without compliance over a period of two calendar years constitutes an increase to a level 2 violation.
2	\$500 per violation	Evidence of three or more level 2 violations without compliance over a period of two calendar years constitutes an increase to a level 3 violation. License: Suspended immediately for remainder of the license year or sixty calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or sixty calendar days, whichever is longer. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.
3	\$2,500 per violation	Evidence of two to five violations without compliance over a period of three calendar years constitutes an increase to a level 3 violation. License: Suspended immediately for remainder of the license year or one hundred eighty calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or one hundred eighty calendar days, whichever is longer. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.
	\$5,000 per violation	Evidence of six violations without compliance over a period of three calendar years constitutes an increase to a level 3 violation.

<u>Violation Level</u>	<u>Monetary Penalty Issued</u>	<u>Violation Level and Action Taken Against License and/or Certificate</u>
		License: Suspended immediately for the remainder of the license year and subsequent license year. Certificate: Suspended immediately for the remainder of the certificate year and subsequent certificate year. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.

(3) If I receive a violation notice imposing a civil penalty, how do I resolve the civil penalty?

(a) Pay the penalty by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box 42600, Olympia, WA 98504-2600 within thirty days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-80-235.

(c) **Request a formal hearing** as outlined in WAC 212-80-205 or 212-80-240.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-235 Informal conference. (1) The ((chief of the Washington state patrol, through the)) director ((of fire protection,)) will provide an opportunity for ((a)) any person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing. However, it ((shall)) will not exceed nor extend ((their)) the thirty-day timeline allotted for the request of a formal hearing - Regardless of the outcome.

(3) The request for an informal hearing may be in any form and:

(a) ((Shall)) **Must** be addressed to the ((chief of the Washington state patrol, through the director of fire protection,)) mitigation officer;

(b) Be received by the director no more than thirty days from the issue date of the civil penalty; and

((b)) (c) Clearly state the subject to be discussed.

(4) ((As a result of an informal conference, the chief of the Washington state patrol, through)) Depending on the availability and time constraints of the person making the request and the hearings officer, the informal conference may be a personal meeting or conference call depending on the availability of the parties and the available technology.

(5) The director ((of fire protection,)) may for good cause choose to amend, withdraw, or reduce the civil penalty as a result of an informal conference.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-240 Formal hearing. (1) ~~((A))~~ Any person may request a formal hearing to appeal a civil penalty issued under this chapter at any time before or after the request of an informal conference, as long as the thirty day period ~~((allotted))~~ from the date of issue listed on the citation has not elapsed. If requesting a formal hearing by mail, the request must be post marked by midnight on the day the request is due.

(2) The ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ will arrange for a hearings officer to conduct the formal hearing~~((-~~

~~((3))~~ The chief of the Washington state patrol, through the director of fire protection, will set a date, time, and location for the formal hearing.

~~((4))~~ The chief of the Washington state patrol, through the director of fire protection,)) and will notify by letter the person requesting the hearing (or their designated representative) of the date, time, location, and hearings officer conducting the formal hearing.

~~((5))~~ (3) The hearings officer will hear the case and, within ninety days of the hearing, render a proposed opinion and order including recommended findings of fact and conclusions of law, according to chapters 34.05 RCW and 10.08 WAC.

~~((6))~~ (4) The formal hearing ((shall)) will be conducted as follows:

(a) The hearings officer will act as an impartial third party.

(b) It is not necessary for the person who requested the hearing to be represented by legal ~~((counsel))~~ counsel.

(c) An official record ~~((shall))~~ will be made through a scribe.

(d) Testimony ~~((shall))~~ will be taken under oath.

(e) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible.

(f) Hearsay evidence is admissible if it meets the statutory standards for being reliable and trustworthy.

(g) A proposed opinion and order will be provided.

~~((7))~~ (5) The proposed opinion and order shall be reviewed by the ((chief of the Washington state patrol, through the)) director ((of fire protection,)) and if accepted be finalized and issued as a final order.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-245 Penalty adjustments. (1) Can a penalty be adjusted without an informal or formal hearing? The assessment of adjustment of penalties for amounts other than those set by chapter~~((s))~~ 18.160 or 18.270 RCW ~~((shall))~~ will be done only by the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ through a hearings process either formally or informally.

(2) What factors are considered for assessing penalties? The assessment of penalties for not being in conformance with chapter~~((s))~~ 18.160 or 18.270 RCW ~~((and/or~~

~~chapter 212-80 WAC)), or this chapter~~ may be made only after considering:

(a) The gravity and magnitude of the violation.

(b) The person's previous record.

(c) Such other considerations as the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ may consider appropriate.

~~((3))~~ During a formal hearing or informal conference, the chief of the Washington state patrol, through the director of fire protection, may modify or adjust the citation, cited violations, and/or penalties assessed in order to meet the requirements of these rules and to ensure)) (d) The uniformity and consistency in ((their)) the application of violations or penalties statewide.

AMENDATORY SECTION (Amending WSR 09-01-114, filed 12/19/08, effective 1/19/09)

WAC 212-80-250 Payment of civil penalty. (1) How can payments be made? The penalty ~~((shall))~~ must be paid to the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ within ~~((twenty-eight))~~ thirty days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) Can payments in installments be made to resolve civil penalties? A request can be made through an informal or formal conference to make installment payments on a civil penalty. If the mitigation officer authorizes installment payments during an informal or formal hearing, the payment plan will be developed and agreed upon at the hearing. Failure to comply with the payment plan will void the payment plan and the remaining balance must be paid by the next business day.

(3) What happens if I fail to pay the civil penalty? If the licensed contractor or certificate holder fails to pay the full penalty or comply with the payment plan as provided by subsection (2) of this section:

(a) The license or certificate of competency will be revoked for the remainder of the current license or certificate year and will not be reinstated or renewed until the penalty is paid in full.

(b) The attorney general may bring an action in the name of the ~~((chief of the Washington state patrol, through the))~~ director ~~((of fire protection,))~~ in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 18.160 or 18.270 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 212-80-020 Right of appeal.

WAC 212-80-028 License and certificate posting.

WAC 212-80-043 Qualifications for preparation of layout drawings, installations, inspections, testing, or maintenance.

WAC 212-80-096	Certificate of competency certification for journey-level sprinkler fitter, residential sprinkler fitter, and trainees.
WAC 212-80-103	Temporary design certificate of competency.
WAC 212-80-128	Certificate of competency prorated fees.
WAC 212-80-133	Sprinkler system inspection and testing contractor.
WAC 212-80-138	Sprinkler system inspection and testing contractor—Work allowed by this license.
WAC 212-80-140	Inspection and testing license not transferable.
WAC 212-80-145	Sprinkler system inspection and testing contractor responsibilities.
WAC 212-80-150	Inspection and testing contractor license renewals.
WAC 212-80-155	Sprinkler system inspection and testing contractor—Prorated fees.
WAC 212-80-160	Sprinkler system inspection and testing contractor—Surety bonds.
WAC 212-80-170	Inspection and testing technicians—Work allowed by this certification.
WAC 212-80-175	Inspection and testing technician—Certification.
WAC 212-80-180	Application/fees for inspection and testing technician certification.
WAC 212-80-185	Inspection and testing technician certification not transferable.
WAC 212-80-188	Inspection and testing technician employment.
WAC 212-80-190	Inspection and testing technician renewal certificates.
WAC 212-80-195	Inspection and testing technician—Prorated fees.
WAC 212-80-200	Suspension or revocation of licenses.
WAC 212-80-220	General rules of citations and penalties.
WAC 212-80-225	Violation types, instances, and penalty assessments.
WAC 212-80-230	Hearings.
WAC 212-80-255	Type I (minimal) violations.
WAC 212-80-260	Type II (moderate) violations.
WAC 212-80-265	Type III (serious) violations.

WSR 14-03-020
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed January 7, 2014, 4:07 p.m., effective February 7, 2014]

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

Purpose: The proposed changes include but may not be limited to updating the language to better define timeline for requesting a trial board and the scope of information to be considered by a hearing officer or board and clean-up to existing language.

Citation of Existing Rules Affected by this Order: Repealing WAC 446-08-007, 446-08-030, 446-08-100, 446-08-110, 446-08-120, 446-08-130, 446-08-160, 446-08-170, 446-08-190, 446-08-240, 446-08-250, 446-08-260, 446-08-270, 446-08-280, 446-08-290, 446-08-300, 446-08-310, 446-08-320, 446-08-330, 446-08-340, 446-08-350, 446-08-360, 446-08-390, 446-08-400, 446-08-460, 446-08-480 and 446-08-540; and amending WAC 446-08-005, 446-08-010, 446-08-040, 446-08-060, 446-08-070, 446-08-080, 446-08-090, 446-08-140, 446-08-150, 446-08-180, 446-08-200, 446-08-210, 446-08-230, 446-08-370, 446-08-380, 446-08-410, 446-08-420, 446-08-430, 446-08-440, 446-08-450, 446-08-470, 446-08-490, 446-08-500, 446-08-510, 446-08-520, and 446-08-530.

Statutory Authority for Adoption: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW.

Adopted under notice filed as WSR 13-21-139 on October 23, 2013.

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 7, Amended 26, Repealed 27.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 26, Repealed 27.

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: December 20, 2013.

John R. Batiste
Chief

AMENDATORY SECTION (Amending Rule .04.010, filed 3/23/60)

WAC 446-08-005 Definitions. (1) "Agency" means the Washington state patrol.

(2) "Board" wherever used in these rules shall mean the trial board constituted as provided in RCW 43.43.070.

~~((2))~~ (3) "Chief" wherever used in these rules shall mean the chief of the Washington state patrol.

~~((3))~~ (4) "Hearing officer" wherever used in these rules shall mean ~~(the chief of the Washington state patrol)~~ an

administrative law judge as appointed by the chief administrative law judge under chapter 34.12 RCW, whose duty it is to preside over such hearings as are conducted by the trial board, as in RCW 43.43.090 provided.

NEW SECTION

WAC 446-08-008 Request for a trial board. A request for a trial board shall be made in writing by the commissioned officer complained of, or the officer's attorney, and must be received by the Washington state patrol headquarters within twenty days of the date the officer was served with the notice of discipline.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-010 Appearance and practice before a hearing officer or board—Who may appear. No person may appear in a representative capacity before a hearing officer or board other than ~~((the following:~~

~~(1)) attorneys ~~((at law))~~ duly qualified and entitled to practice ~~((before the supreme court of))~~ in the state of Washington~~((;~~~~

~~(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law)).~~

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-040 Standards of ethical conduct. All persons appearing in proceedings before a hearing officer or board in a representative capacity ~~((shall))~~ must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the hearing officer or board may decline to permit such person to appear in a representative capacity in any proceeding before the hearing officer or board.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-060 Former employee as expert witness. No former employee of the agency shall, at any time after severing his or her employment with the state of Washington appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding wherein ~~((he))~~ the former employee previously took an active part in the investigation as a representative of the agency.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-070 Computation of time. In computing any period of time prescribed or allowed by this chapter or

any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice of trial board hearing within ~~((the statutory time as required by statute governing the agency or proceeding and in the absence of a statutory requirement, then a reasonable time))~~ ten calendar days before the date set for hearing. The notice shall state the time, place, and issues involved.

NEW SECTION

WAC 446-08-085 Trial board—Recording. All hearings shall be recorded by stenographer or court reporter.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-090 Service ~~((of process—By whom served))~~. ~~((The agency shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.))~~ (1) All notices, pleadings, and other papers filed with the hearing officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(4) Proof of service. Where proof of service is required by statute or rule, filing the papers with the hearing officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-140 Filing (~~with agency~~). Papers required to be filed with the agency shall be deemed filed upon actual receipt (~~by the agency~~) during office hours at the Washington state patrol headquarters (~~accompanied by proof of service upon parties required to be served~~).

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-150 Subpoenas(~~Where provided by law Form~~). (1) Every subpoena shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony, or produce designated books, documents or things under his or her control at a (~~specified time and place~~) hearing.

(2) Subpoenas may be signed and issued by any member of the board, or the hearing officer, or the attorney of record of the party requiring the appearance of the witness. Parties desiring subpoenas to be signed by a member of the board or hearing officer must prepare subpoenas for issuance and submit the subpoenas for signature at least ten calendar days before a hearing.

(3) Parties requesting subpoenas must make arrangements for and bear the expense of service. All subpoenas must be served at least ten calendar days before a hearing.

(4) Subpoenas must be personally served in one of the following ways:

(a) By any suitable person over eighteen years of age;

(b) By exhibiting and reading it to the witness, or by giving him or her a copy thereof; or

(c) By leaving such copy at the place of his or her abode.

(5) When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury. Failure to make proof of service does not affect the validity of the service.

(6) A copy of the subpoena must also be provided to the opposing party or the party, if unrepresented.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-180 Fees. Witnesses summoned before the (~~agency~~) board shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington; EXCEPT, if the witness works for the agency and is on duty at the time he or she appears as a witness on behalf of the agency.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-200 Quashing a subpoena. (Upon motion made promptly, and in any event at or before the time

specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or the authorized agency) (1) A party to the appeal or the person to whom the subpoena, or subpoena duces tecum, is directed may make a motion to quash. The motion must be made promptly and in any event at least five days before the time specified in the subpoena for compliance therewith.

(2) The hearing officer may (~~(+)~~):

(a) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue(~~(-)~~); or

(~~(2)~~) (b) Condition denial of the motion upon just and reasonable conditions.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-210 Enforcement of a subpoena. Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. Enforcement of a subpoena shall be according to RCW 34.05.446 and 34.05.588(1).

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-230 (~~Depositions and interrogatories in contested cases Right to take~~.) No discovery allowed. (~~Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas.~~) There shall be no discovery allowed in the proceedings under this chapter. The record for hearing shall include:

(1) The entire office of professional standards investigation file for the conduct at issue before the board, the entire personnel record for the accused employee, including any training records and the employee's work history;

(2) Previous office of professional standards' investigations and files for the accused employee, when appropriate; and

(3) Any other information considered by the appointing authority in determining the discipline to be imposed.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-370 Official notice(~~Matters of law~~). The hearing officer or board, upon request made before or during a hearing, (~~will officially notice:~~

(1) **Federal law.** The Constitution; congressional acts; resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations

by the governor; and all rules, orders and notices filed with the code revisor.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, and several states and foreign nations;

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar)) may take official notice of facts pursuant to RCW 34.05.452(5).

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-380 ((Material facts.)) Evaluation of evidence. ((In the absence of controverting evidence, the hearing officer or board, upon request made before or during a hearing may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the agency;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the agency as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or board may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the hearing officer or board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer or board may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by

appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.**) Nothing herein shall be construed to preclude the hearing officer or board from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

NEW SECTION

WAC 446-08-405 Burden of proof. The employer bears the burden of proof in any disciplinary matter. Said proof shall be by a preponderance of the evidence.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-410 Form and content of ((agency decisions in contested cases)) trial board decision. Every decision(, order, or recommendation) of the trial board shall contain only the following elements:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel ((to)) participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) ((Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason for the particular action taken;

(6) Whenever practical, the conclusions, recommendations, and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.)) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law including citations of statutes, rules, and regulations relied upon;

(6) In its findings and conclusions, the legal standard for determining whether the charges are sustained shall be the existence or nonexistence of cause as provided in RCW 43.43.070; and

(7) Contain an initial order disposing of all contested issues and complying with the constraints contained in RCW 43.43.090.

NEW SECTION

WAC 446-08-415 Form and content of final decision. Every final decision issued by the chief of the Washington state patrol shall:

(1) Name of the agency and name of proceeding;

(2) List all parties and counsel participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461 and 43.43.090:

(a) However, where the chief adopts, in whole or in part, the factual findings of the trial board, the chief may so state;

(b) Where the chief changes a finding of fact as allowed in RCW 43.43.090, the chief shall set forth the reasons for the different factual findings, as set forth in RCW 34.05.461.

(5) In the chief's findings and conclusions, the legal standard for determining whether the charges are sustained shall be the existence or nonexistence of cause as provided in RCW 43.43.070;

(6) Contain a statement of the discipline to be imposed and the basis of such discipline:

(a) The chief may review additional information contained in files maintained by the agency and relevant to determining the appropriate level of discipline, whether or not such evidence was before the trial board; and

(b) If the chief reviews additional information that is not contained in the trial board record when determining the appropriate level of discipline, such information shall be stated in the final order and placed in the administrative record.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-420 Definition of issues before hearing.

In all proceedings the issues to be adjudicated (~~shall~~) must be made initially as precise as possible, in order that the hearing officer or board may proceed promptly to conduct the hearing on relevant and material matter only.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-430 Prehearing conference rule—

Authorized. (~~In any proceeding the hearing officer or board upon its own motion, or upon the motion of one of the parties or their qualified representatives, may in its discretion direct the parties of their qualified representatives to appear at a specified time and place for a conference to consider~~) (1) The hearing officer may direct the parties or their counsel to engage in a prehearing conference(s) to consider the following:

~~((1))~~ (a) The simplification of issues;

~~((2))~~ (b) The necessity of amendments to the pleading;

~~((3))~~ (c) The possibility of obtaining stipulations, admissions of facts and ~~(of documents)~~ admissions of the genuineness of documents that will avoid unnecessary proof;

~~((4))~~ (d) The limitation of the number of expert witnesses;

~~((5))~~ (e) Number of witnesses expected to be called and their names when possible;

(f) Approximate time necessary for presentation of the evidence of the respective parties;

(g) Whether or when motions may be brought;

(h) Exhibits;

(i) Such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference or at a time and place specified by the hearing examiner.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-440 Record of conference action. (1)

The hearing officer (~~or board~~) shall make an order or statement which recites the action taken at the conference, (~~the amendments allowed to the pleadings, and the~~) including agreements made by the parties (~~or their qualified representatives~~) as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. If no objection to such order is filed within ten days after the date such order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(2) In any proceeding the hearings officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this chapter. The hearing officer shall state on the record the results of such conference.

(3) Nothing in this chapter shall be construed to limit the right of an agency to attempt informal settlement of an adjudicative proceeding at any time.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-450 Submission of documentary evidence in advance. Where practicable, the hearing officer or board may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing officer or board and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subsection (1) of this section, (~~be~~) not be received in evidence in the absence of a clear showing that the offering party had good cause for (~~his~~) the failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, will be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection;

(4) When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered to the hearing officer or board and to the other parties. Only the excerpts, so prepared

and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-470 Expert or opinion testimony (~~and testimony based on economic and statistical data—Number and qualifications of witnesses~~). ((That)) The hearing officer ((or board in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interest parties cannot agree, require them to)) may require that the parties submit to the hearing officer or board and to the other parties written statements containing: The names, addresses and qualifications of their respective opinion or expert witnesses(-); Any reports of the experts; and the nature of the testimony expected by the expert, by a date determined by the ((board)) hearing officer and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-490 Supporting data of experts. ((That)) The hearing officer or board, in its discretion but consistent with the rights of the parties, shall cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC ((446-08-480)) 446-08-470, but wherever practicable ((that he)) must restrict to a minimum the placing of such data in the record.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-500 Effect of noncompliance with WAC 446-08-470 or ((446-08-480)) 446-08-490. Whenever the manner of introduction of opinion or expert testimony ((or testimony based on economic or statistical data)) is governed by requirements fixed under the provisions of WAC ((3-08-470 or 3-08-480 [WAC 446-08-470 or 446-08-480])) 446-08-470 or 446-08-490, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to conform to such requirements.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his or her knowledge, notify the hearing officer ((or)) and board of said desire, stating in detail

the reasons why such continuance is necessary. The hearing officer ((or)) and board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the hearing officer ((or)) and board may grant such a continuance and may at any time order a continuance upon its own or ((his own)) a party's motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the hearing officer ((or)) and board may, in its discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-520 Rules of evidence—Admissibility criteria. (1) Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the hearing officer or board, is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their business, or is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. ((In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.))

(2) If not inconsistent with subsection (1) of this section, the hearing officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

AMENDATORY SECTION (Amending Order II, filed 11/22/74)

WAC 446-08-530 ((Tentative admission—))Exclusion—Discontinuance—Objections. ((When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling.)) The hearing officer or board may, in its discretion, either with or without object, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

NEW SECTION

WAC 446-08-550 Testimony under oath or affirmation—Who may administer oath—Refusal to testify. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

(2) The hearing examiner or court reporter may administer the oath or affirmation to the witness.

(3) Testimony by affidavit is not admitted at a trial board except for good cause shown, or as otherwise permitted in these rules, as provided in a prehearing conference statement or by stipulation of the parties.

(4) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer or board, be grounds for striking all testimony previously given by such witness on a related matter.

NEW SECTION

WAC 446-08-560 Hearing officer authority. The hearing officer shall have the authority to:

(1) Rule on evidentiary matters during the course of the hearing;

(2) Take official notice of facts pursuant to RCW 34.05.452(5);

(3) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(4) Permit or require oral argument or briefs and determine the time limits for submission thereof; and

(5) Take any other action necessary and authorized by any applicable statute or rule.

NEW SECTION

WAC 446-08-570 Board's right to call and question witnesses. The board may:

(1) Question witnesses called by the parties to develop any facts deemed necessary to fairly and adequately decide the matter; and

(2) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-08-007	Agency defined.
WAC 446-08-030	Solicitation of business unethical.
WAC 446-08-100	Upon whom served.
WAC 446-08-110	Service upon parties.
WAC 446-08-120	Method of service.
WAC 446-08-130	When service complete.
WAC 446-08-160	Issuance to parties.
WAC 446-08-170	Service.
WAC 446-08-190	Proof of service.
WAC 446-08-240	Scope.
WAC 446-08-250	Officer before whom taken.
WAC 446-08-260	Authorization.
WAC 446-08-270	Protection of parties and deponents.
WAC 446-08-280	Oral examination and cross-examination.
WAC 446-08-290	Recordation.
WAC 446-08-300	Signing attestation and return.

WAC 446-08-310	Use and effect.
WAC 446-08-320	Fees of officers and deponents.
WAC 446-08-330	Depositions upon interrogatories—Submission of interrogatories.
WAC 446-08-340	Interrogation.
WAC 446-08-350	Attestation and return.
WAC 446-08-360	Provisions of deposition rule.
WAC 446-08-390	Presumptions.
WAC 446-08-400	Stipulations and admissions of record.
WAC 446-08-460	Excerpts from documentary evidence.
WAC 446-08-480	Written sworn statements.
WAC 446-08-540	When not applicable.

WSR 14-03-021

PERMANENT RULES DEPARTMENT OF EARLY LEARNING

[Filed January 7, 2014, 4:29 p.m., effective February 7, 2014]

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

Purpose: To clarify under what circumstances a background check must be completed for an individual sixteen years of age or older residing with an in-home/relative child care provider, and to clarify under what circumstances an in-home/relative provider will be permanently disqualified for giving incorrect or misleading information or withholding information as to whether an individual sixteen years of age or over living with the provider is a registered sex offender.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0143 and 170-290-0160.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-23-090 on November 20, 2013.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 7, 2014.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0143 In-home/relative providers—Background checks—Required persons. (1) Background checks for eligible licensed and certified providers are covered under chapter 170-06 WAC.

(2) A background check must be completed for:

(a) All in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) A background check must be completed for individuals listed in subsection (2)(a) and (b) of this section at least every two years.

(4) Additional background checks must be completed for individuals listed in subsection (2)(a) and (b) of this section when:

(a) Any individual sixteen years of age or older is newly residing with a provider when the provider cares for the child in the provider's own home where the child does not reside;

(b) DSHS has a valid reason to check more frequently;

(c) An in-home/relative provider applies to provide care for a family, such as when:

(i) A break in service occurs to the current consumer;

(ii) There is a break in consumer eligibility; or

(iii) A provider is currently providing care and there are no prior background results for this provider.

(5) DSHS does not need to request a new background check for an individual in subsection (2)(a) or (b) if:

(a) DSHS has results that were received no more than ninety days prior to the current requested start date of care; and

(b) The results indicate there is no record.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0160 In-home/relative providers—Background checks—Disqualified providers. (1) DSHS permanently disqualifies the person as an in-home/relative provider for WCCC if:

(a) ~~((A consumer's))~~ The provider or an individual listed in WAC 170-290-0143(2) has a background containing a permanently disqualifying conviction for crimes on the DEL director's list in WAC 170-06-0120(1); or

(b) Care takes place in the provider's home where the child does not reside and the ~~((in-home/relative))~~ provider ~~((intentionally or))~~ knowingly gives DSHS incorrect or misleading information or withholds information as to whether an individual sixteen years of age or over living with the provider is a registered sex offender.

(2) If the conditions in WAC 170-290-0167 (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not permanently disqualify the provider. This subsection does not apply to subsection (1)(b) of this section.

WSR 14-03-022

PERMANENT RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Securities Division)

[Filed January 7, 2014, 4:31 p.m., effective February 7, 2014]

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

Purpose: Washington adopted its Commodities Act in 1986, based on the North American Securities Administrators Association (NASAA) Model State Commodity Act (Model Act). Since that time, NASAA has amended the Model Act to expand the definition of "precious metal" to include palladium and copper, in addition to the initially covered metals of gold, silver, and platinum. A majority of other states that have adopted the Model Act have amended their own laws to reflect this expanded definition. Pursuant to this rule-making notice, the securities division is amending the definition of "precious metal" to include palladium and copper to broaden the exemption for precious metal commodity contracts in RCW 21.30.040 (1)(b).

Statutory Authority for Adoption: RCW 21.30.400, 21.30.010 (17)(d), 21.30.040 (1)(b).

Adopted under notice filed as WSR 13-21-084 on November 6 [October 17], 2013.

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 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, 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: January 7, 2014.

Scott Jarvis
Director

Chapter 460-300 WAC

GENERAL RULES

NEW SECTION

WAC 460-300-010 Definitions—Precious metal. For the purposes of RCW 21.30.010(17), the term "precious metal" includes:

(1) Palladium, in either coin, bullion, or other form; and

(2) Copper, in either coin, bullion, or other form.

WSR 14-03-027
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 8, 2014, 9:12 a.m., effective February 8, 2014]

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

Purpose: The department is amending WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?, to adopt penalties for Washington food assistance programs consistent with federal penalties for intentional program violations for the supplemental nutrition assistance program (SNAP). The amendments include second conviction penalties for Washington food assistance programs consistent with federal penalties for intentional program violations for SNAP.

Citation of Existing Rules Affected by this Order: Amending WAC 388-446-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16.

Adopted under notice filed as WSR 13-22-079 on November 6, 2013.

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

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

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

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

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

Date Adopted: January 2, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-012, filed 6/21/12, effective 7/22/12)

WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose? (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

- (a) Washington Basic Food program or Basic Food;
- (b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;
- (c) Transitional food assistance (TFA) under chapter 388-489 WAC; and
- (d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have a disqualification period if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

- (i) For a period of twenty-four months for a first offense; and
- (ii) Permanently for a second offense.

(b) **Weapons** - If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are found to have provided false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance:

- (i) For ten years on the first offense.
- (ii) For ten years on the second offense.
- (iii) Permanently for the third offense.

(e) **Receiving benefits in more than one state** - If you are found to have provided false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance:

- (i) For ten years on the first offense.
- (ii) For ten years on the second offense.
- (iii) Permanently for the third offense.

(4) In addition to penalties for crimes described in subsection (3), if you commit an IPV you will not be eligible for food assistance:

- (a) For a period of twelve months for any first intentional program violation;
- (b) For a period of twenty-four months for any second intentional program violation; and
- (c) Permanently for any third intentional program violation.

(5) We only apply a disqualification penalty to the person or persons who have committed an intentional program violation.

(6) Start date of a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

(7) **Disqualifications apply in all states** - If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(8) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

WSR 14-03-029

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 8, 2014, 10:11 a.m., effective February 8, 2014]

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

Purpose: The national examinations for fundamentals of engineering and land surveying changed to a computer based format on January 4, 2014. Part of that transition involves simplified online registrations that will enable our program to greatly reduce our workload on application processing. The program does not feel there is a need to collect processing fees from the fundamentals of engineering and fundamentals of land surveying exam applicants and is requesting suspension of the application processing and reexam fees.

Housekeeping amendments to other sections of chapter 196-26A WAC were made to update current language.

Citation of Existing Rules Affected by this Order: Repealing WAC 196-26A-070 and 196-26A-110; and amending WAC 196-26A-010, 196-26A-020, 196-26A-025, 196-26A-030, 196-26A-035, 196-26A-040, 196-26A-050, 196-26A-055, and 196-26A-100.

Statutory Authority for Adoption: RCW 18.43.080.

Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 13-23-072 on November 19, 2013.

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 9, Repealed 2.

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 9, Repealed 2.

Date Adopted: January 8, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-010 State fee authority, applications and payment procedures. The board of registration for professional engineers and land surveyors (board) reviews and approves registration applications for all examinations under the provisions of chapter 18.43 RCW. The state fees listed in this chapter are adopted by the director of the department of licensing (department) in accordance with RCW 43.24.086. ~~((For registration under provisions of chapter 18.43 RCW;))~~ The required state fees as listed in WAC 196-26A-025 must accompany all registration applications. If payment is made by check or money order, the payment should be made payable to the ~~((state treasurer))~~ department of licensing. Should an applicant be judged ineligible for examination, the fee paid to the department of licensing shall be retained to cover the costs of processing. An applicant who fails an examination may ~~((be scheduled for a retake))~~ reapply to the board for examination by paying the required fee ~~((within the time frame established by the board of registration for professional engineers and land surveyors (board)))~~ and providing any information requested. Applicants who fail to appear for their scheduled examination will forfeit their fees ~~((as determined by the board))~~ an examination without forfeiting their fees by submitting a written notice to the board ((office)) by the date established by the board.

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-020 Examination vendor, procedures and costs. The board ~~((has determined the National Council of Examiners for Engineering and Surveying (NCEES)))~~ shall determine the vendor, if any, who will administer ((their)) examinations on their behalf ((of the board)). In addition to applicable state fees, ~~((all approved applicants are charged by NCEES for the costs of examinations, exam))~~ the vendor may collect from the applicants the charges of exam-

~~ination development, examination administration and grading. ((All these costs must be paid in advance by the applicant to NCEES to reserve a seat at the examination. Applicants who have not paid the required costs will not be admitted to the examination. Applicants who fail to appear for their scheduled examination will forfeit all moneys paid to NCEES. The schedule of the costs charged by NCEES is available from NCEES or the board offices.)) Terms and conditions for payment of the charges to the vendor are determined by the vendor.~~

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-025 State fees for examinations.

FUNDAMENTAL EXAMINATIONS:

Fundamentals of Engineering (FE):

Application fee (incl. wall certificate): \$30
 Processing fee to retake the FE examination: \$20

Fundamentals of Land Surveying (FLS):

Application fee (incl. wall certificate): \$30
 Processing fee to retake the FLS examination: \$20

Note: Additional charges to cover costs of NCEES fundamentals examinations, exam administration and grading will be ((billed)) charged by NCEES to approved applicants.

PROFESSIONAL ENGINEERING EXAMINATIONS:

NCEES Examinations: (All branches other than board prepared examinations)

Application fee (incl. wall certificate and initial license): \$65
 Processing fee to retake the NCEES PE exam: \$30

Note: Additional charges to cover costs of NCEES PE examinations, exam administration and grading will be ((billed)) charged by NCEES to approved applicants.

Structural Engineering:

Note: To become licensed in structural engineering ((a candidate) an applicant is required to pass sixteen hours of structural examinations when determined eligible under Washington law. The examinations for structural licensing consist of the NCEES 16-hour Structural ((H and the Washington Structural III examination. One application is required for structural engineering and when approved a candidate may sit for both examinations when they are offered on successive days)) examination.

Application fee (incl. wall certificate and initial license): \$65

Processing fee to retake the NCEES 16-hour Structural ((H or Washington Structural III)) exam((s)): \$30

Note: Additional charges to cover costs of NCEES 16-hour Structural ((H)) examination, exam administration and grading will be ((billed)) charged by NCEES to approved applicants.

~~((Structural III examination fee: \$300
 Examination reseat: \$50/item~~

Forest Engineering:

Application fee (incl. wall certificate and initial license): \$65
 Processing fee to retake the forest engineering examination: \$30
 Examination reseat: \$50/item

Note: The examination for licensure in forest engineering is a ~~Washington-specific examination that is offered in April of the year depending upon applications received. Interested applicants should confirm schedule by contacting the board office.))~~

PROFESSIONAL LAND SURVEYING:

Note: The examinations for licensure in professional land surveying include an NCEES PLS examination, and a Washington specific examination ((and a take-home examination over ~~Washington laws and rules~~)). One application is required and when determined eligible a candidate will sit for the NCEES PLS examination and the Washington specific examination on the same day.

Application fee (incl. wall certificate, state exams, and initial license): \$140
 Processing and examination fee to retake the state PLS exam: \$100

Note: Additional charges to cover costs of NCEES LS examination, exam administration and grading will be ((billed)) charged by NCEES to approved applicants.

Processing fee to retake the NCEES PLS examination: \$30

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-030 Applications for comity licensure and temporary permits. For comity licensure under the provisions of chapter 18.43 RCW, ((the required state fee)) a nonrefundable state fee must accompany all applications. Payment by check or money order must be made payable to the ((Washington state treasurer. Should an applicant be judged ineligible for licensure by comity, the fee submitted shall be retained to cover the cost of processing)) department of licensing.

A temporary permit to practice engineering in the state of Washington is available to nonresidents for a period of not to exceed thirty days total in any one-year period. Eligible applicants must have a valid license to practice engineering in the United States, have no outstanding disciplinary actions against their licensure and meet the experience requirements for licensure in Washington. Temporary permits must be issued prior to any authorized practice in Washington.

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-035 State fees for comity licensure and temporary permit applications.

Professional engineering,
comity licensure application: \$110

Note: For licensure by comity in structural engineering an applicant must have a current license as a professional engineer from a U.S. jurisdiction, meet the experience requirements ~~((established by the board))~~ and have passed sixteen hours of ~~((rigorous))~~ examinations in structural engineering ~~((as determined))~~ approved by the board ~~((to be equivalent to the examinations required by the Washington board)).~~

Professional engineering, tem-
porary permit application: \$110

Professional land surveying,
comity licensure application: \$140

Note: For licensure by comity in land surveying an applicant must meet the experience requirements ~~((established))~~ approved by the board and have passed a written examination ~~((deemed))~~ satisfactory to the board. Eligible applicants are required to pass the Washington specific examination on Washington laws and rules.

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-040 Renewals for professional engineer and professional land surveyor licenses. The date of renewal, renewal interval and renewal fee is established by the director of the department of licensing in accordance with chapter 43.24 RCW. ~~((To renew a license, the licensee must:~~

(1) ~~Include payment of the renewal fee;~~

(2) ~~Include the licensee's Social Security number as provided for by RCW 26.23.150; and~~

(3) ~~Include any name/address changes that apply.~~

H) A completed application for renewal requires payment of a fee, and any information specified by the board in the renewal notice. For a professional land surveyor the renewal application requires completion of professional development requirements. If a completed application for renewal has not been received by the department by the date of expiration (postmarked before the date of expiration if mailed or transacted online before the date of expiration), the license ~~((becomes))~~ is invalid. ~~((Licensees who fail to pay the renewal fee within))~~ Renewals that remain expired over ninety days ~~((of))~~ past the date of expiration ~~((are required to pay an additional))~~ require payment of a penalty fee equivalent to the fee for a one-year renewal.

~~((It is the responsibility of each licensee to renew their license in a timely manner regardless of))~~ in addition to the base renewal fee. The licensee is responsible to ensure timely renewal whether or not they received a renewal notice from the department.

The licenses for individuals registered as professional engineers or professional land surveyors shall be renewed every two years or as otherwise set by the director of the department of licensing. The date of ~~((renewal))~~ expiration shall be the licensee's date of birth. The initial license issued to an individual shall expire on the ~~((licensee's))~~ next occurrence of his or her birth date. ~~((However,))~~ If the ~~((licensee's))~~ next birth date is within three months of the initial date of licensure, the original license shall expire on his or her second birth date following original licensure.

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-050 Application for certificate of authorization. ~~((Except for professional service corporations (PS) and professional service limited liability companies (PLLC) as defined by the Washington secretary of state,))~~ All corporations, joint stock associations and limited liability companies that offer engineering or land surveying services to the public must obtain a certificate of authorization from the board. Each application must be accompanied by the ~~((required))~~ nonrefundable state fee made payable to the ~~((state treasurer. Should an applicant be judged ineligible for certificate of authority, the fee submitted shall be retained to cover the cost of processing))~~ department of licensing.

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-055 Renewal of certificate of authorization. The date of renewal, renewal interval and renewal fee are established by the director of the department of licensing in accordance with chapter 43.24 RCW. ~~((To renew a certificate of authorization,))~~ A complete application for renewal requires payment of a fee, and any information specified by the board in the renewal notice such as changes to: Name of firm, services offered, business address, and names of licensee(s) designated in responsible charge for the services provided. The payment of the renewal fee must be received by the department by the date of expiration (postmarked if renewal is mailed by U.S. mail) or the certificate of authorization ~~((becomes))~~ is invalid. ~~((The complete renewal must include any changes to: The name of firm, scope of services offered, mailing address of firm and name and address of licensee(s) named in responsible charge for the services provided. A certificate of authorization that is expired is invalid))~~ on the date of expiration.

AMENDATORY SECTION (Amending WSR 06-06-019, filed 2/21/06, effective 3/24/06)

WAC 196-26A-100 Suspended fees. ~~((Effective March 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.))~~ All applicants for the NCEES fundamentals of engineering examination and the

fundamentals land surveying examination, administered after January 1, 2014, will have the board application processing fee suspended from collection.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
Structural Engineering:			
Structural III Examination & application fee	\$365	\$35	\$330
Structural III Examination retake:	\$330	\$30	\$300
Comity Licensure:			
Engineering	\$110	\$40	\$70
Surveyor comity	\$140	\$40	(\$100))

Fundamentals of Engineering (FE):

<u>Application fee (incl. wall certificate):</u>	<u>\$30</u>	<u>\$30</u>	<u>\$0</u>
<u>Processing fee to retake the FE examination:</u>	<u>\$20</u>	<u>\$20</u>	<u>\$0</u>

Fundamentals of Land Surveying (FLS):

<u>Application fee (incl. wall certificate):</u>	<u>\$30</u>	<u>\$30</u>	<u>\$0</u>
<u>Processing fee to retake the FLS examination:</u>	<u>\$20</u>	<u>\$30</u>	<u>\$0</u>

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 196-26A-070 Replacement document fees.
- WAC 196-26A-110 Suspended fees.

WSR 14-03-044

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 9, 2014, 7:57 a.m., effective February 9, 2014]

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

Purpose: Amending WAC 308-96A-136, pertaining to moped licensing, to update statutory references and conform to recent legislation.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-136.

Statutory Authority for Adoption: RCW 46.01.110 and 46.16A.200.

Adopted under notice filed as WSR 13-23-067 on November 18, 2013.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: January 9, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-11-096, filed 5/20/02, effective 6/20/02)

WAC 308-96A-136 Mopeds—License plates. (1) Will the department issue a license plate for my moped?

The department will issue a motorcycle series license plate for your moped when you make proper application.

The number on the license plate serves as the moped's registration number as required in RCW ~~((46.16.630))~~ 46.16A.405.

(2) How do I display the license plate on my moped?

The license plate must be displayed on the rear of your moped as provided in RCW ~~((46.16.240))~~ 46.16A.200.

~~(((3) If my moped does not meet the standard criteria for a moped, can I get it licensed as such? A Washington state patrol inspection may be required before a license can be issued. The Washington state patrol has the discretion to inspect and define similar vehicles as mopeds. If the vehicle is similar to a moped, it must be identified as a moped by the Washington state patrol inspection before a license can be issued.))~~

WSR 14-03-049

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 9, 2014, 2:28 p.m., effective February 9, 2014]

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

Purpose: WAC 246-10-701 Administrative review of initial orders, the rule specifies that if no request for an administrative review of a health law judge's initial order is received within twenty-one days, the order becomes final. In addition, the rule allows the secretary of health, upon his or her own motion, to petition for administrative review of an initial order.

Citation of Existing Rules Affected by this Order: Amending WAC 246-10-701.

Statutory Authority for Adoption: RCW 18.130.050; ESHB 1381 (chapter 109, Laws of 2013).

Other Authority: RCW 18.130.095.

Adopted under notice filed as WSR 13-22-061 on November 4, 2013.

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

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

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

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

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

Date Adopted: January 8, 2014.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-701 Appeal from initial order and initial order becoming a final order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-10-503 or 246-10-608 stating the specific grounds upon which exception is taken and the relief requested.

(2) The secretary, upon his or her own motion, may petition for administrative review of an initial order.

(3) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk office within twenty-one days of service of the initial order.

~~((3))~~ (4) The opposing party may file a response to a petition for administrative review filed as provided in this section. The response shall be filed at the adjudicative clerk office. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-10-503, the response shall be filed within ten days of service of the petition. In all other matters, the response shall be filed within twenty days of service of the petition.

(5) If a party or the secretary does not request administrative review of an initial order as described above, an initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after the adjudicative clerk office serves the initial order.

WSR 14-03-054

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 13, 2014, 7:33 a.m., effective February 13, 2014]

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

Purpose: To clarify under what circumstances a trainer may enter more than two horses in an overnight race.

Citation of Existing Rules Affected by this Order: Amending WAC 260-40-065.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-23-043 on November 15, 2013.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 10, 2014.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 10-10-017, filed 4/26/10, effective 5/27/10)

WAC 260-40-065 Multiple entries. A trainer, owner, or authorized agent may not enter and start more than two horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

(1) Stake races;

(2) Races in which there are fees required to nominate or enter; and

(3) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than three horses. ~~((4))~~ The third entry may not exclude a single entry, or be allowed if there are less than seven entries received prior to the entry of the trainer's third horse.

WSR 14-03-055

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 13, 2014, 7:33 a.m., effective February 13, 2014]

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

Purpose: To update the penalty matrix to reflect recently amended WACs.

Citation of Existing Rules Affected by this Order: Amending WAC 260-84-060.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-23-045 on November 15, 2013.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 10, 2014.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-07-046, filed 3/15/13, effective 4/15/13)

WAC 260-84-060 Penalty matrixes. (1) Unless provided for elsewhere, the imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 <u>or 260-36-260</u>	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC ((260-28-250) <u>260-36-150</u> and ((260-36-150) <u>260-36-260</u>	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150 <u>and 260-44-080</u>	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of crop WAC ((260-52-040) <u>260-52-045</u>	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$200	\$200 to \$300	\$200 to \$500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	\$50 to \$100	\$100 to \$200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$50	\$100	\$200
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or <u>260-36-260</u>	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC ((260-28-250 and) <u>260-36-150 and 260-36-260</u>)	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of crop WAC ((260-52-040) <u>260-52-045</u>)	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$50	\$100 to \$200	\$200 to \$300
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	\$50	\$50 - subsequent offenses \$50 plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$200	\$200 to \$300	\$300 to \$500
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC ((260-28-230) <u>260-36-250</u>)	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - Licensing WAC 260-36-080	License canceled		
((Pending felony charges or conviction - Ineligible for licensing WAC 260-36-120(2))	Denial, suspension or revocation of license))		
Failure to divulge a <u>pending felony charge or a felony conviction</u> WAC 260-36-050 <u>and</u> <u>260-36-120</u>	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050 <u>or</u> <u>260-36-120</u>	Warning to \$250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the pari-mutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a referral will not preclude commission action in any matter. An executive secretary's or

stewards' ruling will not prevent the commission from imposing a more severe penalty.

**WSR 14-03-056
PERMANENT RULES
HORSE RACING COMMISSION**

[Filed January 13, 2014, 7:34 a.m., effective February 13, 2014]

Effective Date of Rule: Thirty-one days after filing.
Purpose: To amend how pools are refunded on horses declared nonstarters to reflect current software capabilities.

Citation of Existing Rules Affected by this Order:
Amending WAC 260-52-030.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-23-042 on November 15, 2013.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 10, 2014.

Douglas L. Moore
Executive Secretary

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-52-030 Starting the race. (1) The starter is responsible for assuring that each participant receives a fair start.

(2) If, when the starter dispatches the field, any door at the front of the starting gate stalls does not open properly or if the action by any starting gate personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a nonstarter.

(3) Should a horse not be in the starting gate stall at the time the starting gates are opened, the horse will be declared a nonstarter by the stewards.

(4) Should an accident or malfunction of the starting gate, or other unforeseeable event occur during the running of the race, which compromises the fairness of the race or the safety of the participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from ~~((one or more))~~ all parimutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multirace wagers.

WSR 14-03-057

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 13, 2014, 7:35 a.m., effective February 13, 2014]

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

Purpose: To remove the restriction on the use of stable names for advertising.

Citation of Existing Rules Affected by this Order: Amending WAC 260-28-020.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-23-044 on November 15, 2013.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 10, 2014.

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

WAC 260-28-020 Stable names—Registration fees and restrictions. Licensed owners and lessees may adopt a stable name subject to the approval of the stewards.

(1) Four or more owners are required to race under a stable name.

(2) The applicant must identify all persons using the stable name. Changes must be reported immediately to the ~~((stewards))~~ commission.

(3) Application for a stable name must include a designation of a managing owner and an address. Receipt of any correspondence, notice or order at such address will constitute official notice to all persons involved in the ownership of such horse.

(4) All persons with an ownership interest in the stable name must comply with all rules regarding licensing of owners.

(5) A person who has registered a stable name may cancel it upon written notice to the ~~((stewards))~~ commission.

(6) The stewards will not approve a stable name that has been registered by any other person with any association conducting a recognized race meeting.

(7) ~~((No stable name may be used, if in the judgment of the stewards, it is being used for advertising purposes.))~~ When applying for a stable name that may be deemed as being used for advertising purposes, the requestor may be required to provide documentation from the business or other entity that they have permission to use said name.

(8) A stable name must be clearly distinguishable from other stable names.

WSR 14-03-060

PERMANENT RULES

DEPARTMENT OF

EARLY LEARNING

[Filed January 13, 2014, 9:44 a.m., effective February 13, 2014]

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

Purpose: To remove language in chapter 170-290 WAC referring to and associated with special needs level 3, such that rates in excess of special needs level 2 rates require an exception to rule request, to clarify that special needs rate request forms must be completed separately by the consumer and provider, to specify the timeframe in which the department of early learning is required to notify the provider of a decision on a level 2 special needs additional rate request, and to update outdated terminology.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; chapter 43.215 RCW.

Adopted under notice filed as WSR 13-23-093 on November 20, 2013.

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 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: January 13, 2014.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0220 Special needs rates—Qualification and required documentation. (1) **Qualification.** To qualify for a special needs rate in addition to the base rate, the consumer must request a special needs rate review for his or her child. The child must either:

(a) Be thirteen up to nineteen years old and be under court supervision; or

(b) Be less than nineteen years old and have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care needed in the child care setting.

(2) **Required documentation.** Documentation must:

(a) Support the severity of the condition and level of care required to meet that child's need;

(b) Describe the child's needs in addition to the daily routine care required under chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care;

(c) Address relevant areas, such as ambulatory assistance, feeding, hygiene assistance, communication, or behavior as applicable and as needed by the child;

(d) Include the DEL special needs request form completed separately by the consumer and the provider; and

(e) Have the child's condition and need for higher level of care verified by an individual who is not employed by the child care facility nor a relative of the provider or the child's family, and is either a:

(i) Health, mental health, education or social service professional with at least a master's degree; or

(ii) Registered nurse;

(f) Include one or more of the following completed forms from a person listed in (e) of this subsection:

(i) Individualized education plan (IEP);

(ii) Individual (~~habilitation~~) health plan (IHP);

(iii) Individual family service plan (~~(IFP)~~) IFSP;

(iv) Basic health records from his or her health care provider;

(v) Comprehensive assessments from a mental health professional; or

(vi) Medical or psychological reports from a mental health professional.

(3) **Special needs review.**

(a) DSHS processes all Level 1 special needs cases.

(b) DEL and DSHS jointly process Level 2 (~~and Level 3~~) special needs cases.

(c) All requests for Levels 1(~~(s)~~) and 2(~~(s) and 3~~) special needs additional rates are decided within fifteen consecutive days of the initial request. The fifteen-day time limit begins on the day after the date that the consumer and provider provide all of the required verification for that case as provided in this section.

(d) The provider will be notified of the approval or denial of a Level 2 special needs additional rate request within fourteen calendar days of the decision.

(4) **Purpose of special needs rate.** WCCC does not pay for the provider's training needs to care for a specific child or for the child's equipment needs while in the child care setting. The special needs rate is for care provided in addition to the daily routine care required under chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1)

In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants			
		(One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour(~~or~~

~~(c) **Level 3.** A rate that exceeds \$15.89 per hour).~~

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least eighteen years of age; and

(b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

(a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour(~~or~~

~~(c) **Level 3.** A rate that exceeds \$15.89 per hour).~~

(2) If the provider has an exception to care for a child who:

(a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter 170-296A WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0235 Special needs rates—In-home/relative providers. (1) In addition to the base rate as provided in WAC 170-290-0240(1), the state may authorize the following additional special needs rate which is reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or

(b) **Level 2.** A rate greater than Level 1, but not to exceed \$9.41 per hour(~~or~~

~~(c) **Level 3.** A rate that exceeds \$9.41 per hour).~~

(2) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family.

WSR 14-03-077

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed January 15, 2014, 11:32 a.m., effective February 15, 2014]

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

Purpose: SHB 1001 and ESB 5607 passed in the 2013 legislative session directs the board to adopt rules to implement the new theater licenses.

Statutory Authority for Adoption: RCW 66.24.650 and 66.24.655.

Adopted under notice filed as WSR 13-24-124 on December 4, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 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: January 15, 2014.

Sharon Foster
Chairman

NEW SECTION

WAC 314-02-082 What is a beer and wine theater license? (1) A beer and wine theater is a place of business where motion pictures or other primarily nonparticipatory entertainment or events are shown. The holder of a beer and wine theater license is allowed to sell beer, strong beer, and wine, at retail, for consumption on the licensed premises.

(2) The requirements for the beer and wine theater license are as follows:

- (a) The theater has no more than four screens.
- (b) All servers of beer and wine are required to attend a mandatory alcohol server training (MAST) program.
- (c) The serving size for wine is five ounces. The serving size for beer is twelve ounces.
- (d) If the theater premises will be frequented by minors, an alcohol control plan agreement must be signed and submitted to the board during the application process.

(3) The alcohol control plan agreement will be provided on a form by the board and includes the following requirements:

(a) To ensure that alcoholic beverages are not sold to persons under the age of twenty-one, staff will request identification from any patron who appears to be age thirty or under and who is attempting to purchase an alcoholic beverage.

(b) Alcoholic beverages must be served in containers that differ significantly from containers utilized for nonalcoholic beverages.

(c) All alcoholic beverages sold under this license must be sold by the individual drink.

(d) If staff observes a patron who is in the possession of or who is consuming an alcoholic beverage who appears to be of questionable age, staff will request identification from that patron. If the patron is unable to produce an acceptable form of identification verifying their age the alcohol will be confiscated.

(e) Staff will accept only those forms of identification that are acceptable per WAC 314-11-025 to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

(f) All employees involved in the sale, service and/or supervision of alcoholic beverages will be required to attend MAST to obtain the appropriate permit for their level of service.

(g) Sufficient lighting must be maintained at the point of sale so that identification can be confirmed and patrons observed for signs of intoxication.

(h) To ensure alcoholic beverages are served in a safe, responsible, and controlled manner, sales and service of alcoholic beverages will be limited to one serving per person per transaction.

(i) If a patron is accompanied by another patron who wants to pay for both people's drinks, they may do so, provided that both patrons are of legal age to purchase, and have proper identification, if requested, and are not displaying signs of intoxication.

(j) Alcohol may only be sold, served, and consumed in areas designated in the alcohol control plan agreement and approved by the board.

(k) Staff will refuse to sell an alcoholic beverage to any person who appears to be intoxicated. Alcoholic beverages will be removed from any person who appears to be intoxicated.

(l) This alcohol control plan agreement will be prominently posted on the licensed premises.

(4) Penalties are doubled for a violation involving minors or the failure to follow the signed alcohol control plan agreement.

(5) If a theater premises has a restaurant located outside of the actual theater screening areas, beer and wine may be served and consumed in the restaurant area.

(a) Beer may be sold by the pitcher as well as by individual serving for consumption in the restaurant area.

(b) Wine may be sold by the bottle as well as by the individual serving for consumption in the restaurant area.

NEW SECTION

WAC 314-02-087 What is a spirits, beer, and wine theater license? (1) A spirits, beer, and wine theater is a place of business where motion pictures or other primarily nonparticipatory entertainment or events are shown. The holder of a beer and wine theater license is allowed to sell spirits, beer, strong beer, and wine, at retail, for consumption on the licensed premises.

(2) The requirements for the spirits, beer, and wine theater license are as follows:

(a) The theater has no more than one hundred twenty seats per screen.

(b) All servers of beer and wine are required to attend a mandatory alcohol server training (MAST) program.

(c) The serving size for spirits is one and one quarter ounce. The serving size for wine is five ounces. The serving size for beer is twelve ounces.

(d) There must be tabletop accommodations for in theater dining.

(e) If the theater premises will be frequented by minors an alcohol control plan agreement must be signed and submitted to the board during the application process.

(3) A spirits, beer, and wine theater licensee must serve at least eight complete meals. Establishments shall be maintained in a substantial manner as a place for preparing, cooking, and serving of complete meals.

(a) "Complete meal" means an entree and at least one side dish.

(b) "Entree" means the main course of a meal. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.

(d) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section.

(e) The complete meals must be prepared on the restaurant premises.

(f) A chef or cook must be on duty while complete meals are offered.

(g) A menu must be available to customers.

(h) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(4) The alcohol control plan agreement will be provided on a form by the board and includes the following requirements:

(a) Ensure that alcoholic beverages are not sold to persons under the age of twenty-one, staff will request identification from any patron who appears to be age thirty or under and who is attempting to purchase an alcoholic beverage.

(b) Alcoholic beverages must be served in containers that differ significantly from containers utilized for nonalcoholic beverages.

(c) All alcoholic beverages sold under this license must be sold by the individual drink.

(d) If staff observes a patron who is in the possession of or who is consuming an alcoholic beverage, who appears to be of questionable age, staff will request identification from that patron. If the patron is unable to produce an acceptable form of identification verifying their age, the alcohol will be confiscated.

(e) Staff will accept only those forms of identification that are acceptable per WAC 314-11-025 to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

(f) All employees involved in the sale, service, and/or supervision of alcoholic beverages will be required to attend MAST to obtain the appropriate permit for their level of service.

(g) Sufficient lighting must be maintained at the point of sale so that identification can be confirmed and patrons observed for signs of intoxication.

(h) To ensure alcoholic beverages are served in a safe, responsible, and controlled manner, sales and service of alcoholic beverages will be limited to one serving per person per transaction.

(i) If a patron is accompanied by another patron who wants to pay for both people's drinks, they may do so, provided that both patrons are of legal age to purchase, and have proper identification, if requested, and are not displaying signs of intoxication.

(j) Alcohol may only be sold, served, and consumed in areas designated in the alcohol control plan agreement and approved by the board.

(k) Staff will refuse to sell an alcoholic beverage to any person who appears to be intoxicated. Alcoholic beverages will be removed from any person who appears to be intoxicated.

(l) This alcohol control plan agreement will be prominently posted on the licensed premises.

(5) Penalties are doubled for a violation involving minors or the failure to follow the signed alcohol control plan agreement.

(6) If the theater premises has a restaurant located outside of the actual theater screening areas, spirits, beer, and wine may be served and consumed in the restaurant area.

(a) Spirits may be sold by the individual drink.

(b) Beer may be sold by the pitcher as well as by individual serving for consumption in the restaurant area.

(c) Wine may be sold by the bottle as well as by the individual serving for consumption in the restaurant area.

WSR 14-03-078

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed January 15, 2014, 11:32 a.m., effective February 15, 2014]

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

Purpose: SSB 5774 passed in the 2013 legislative session. Rules are needed to clarify the new law for community and technical colleges that wish to allow their students to taste alcoholic beverages as part of the culinary, beer technology, wine technology, or spirituous technology related degree program.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 13-23-105 on November 20, 2013.

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 0, Amended 0, Repealed 0.

Date Adopted: January 15, 2014.

Sharon Foster
Chairman

NEW SECTION

WAC 314-38-060 Special permit for technical or community colleges as authorized by RCW 66.20.010(12) shall be called a class 15 permit. (1) The class 15 permit allows tasting of alcohol by persons between eighteen and twenty years old. The requirements for a class 15 permit are as follows:

(a) The permit applicant is a technical or community college;

(b) The permit allows tasting, not consuming of alcohol as part of the class curriculum with approval of the educational provider;

(c) The student must be enrolled in a required or elective class at the college premises as part of a culinary, beer technology, wine technology, or spirituous technology-related degree program;

(d) The alcohol served to any person in the program under twenty-one years of age is tasted but not consumed for the purpose of educational training as part of the class curriculum with the approval of the educational provider;

(e) Faculty or staff of the educational provider must be at least twenty-one years of age, supervise the service and tasting, and hold a class 12 or class 13 alcohol server permit; and

(f) Students may not purchase the alcoholic beverages.

(2) There is no annual fee for this permit.

WSR 14-03-081

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 15, 2014, 2:21 p.m., effective February 15, 2014]

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

Purpose: WAC 458-20-273 Renewable energy system cost recovery, explains the renewable energy incentive program created by the enabling statutes found at RCW 82.16.110 through 82.16.130. SB 5526 (chapter 179, Laws of 2011) amended RCW 82.16.110 through 82.16.120 adding solar stirling converters manufactured in Washington to the list of qualified renewable energy devices or components. This rule-making effort was to recognize these statutory changes and to address and clarify other issues that have been identified during the department's administration of this program.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-273 Renewable energy system cost recovery.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Other Authority: RCW 82.16.110, 82.16.120, and 82.16.130.

Adopted under notice filed as WSR 13-20-130 on October 2, 2013.

Changes Other than Editing from Proposed to Adopted Version:

- Language explaining that a person who leases a system under a long-term lease of at least ten years duration with an option to purchase that system at the end of the lease term for a set fair market value was removed. This mainly affects sections 402, 403, and 404.
- At section 201, the word "discretionary" was replaced by the word "voluntary" and at subsections 305 (a) and (b) the word "voluntarily" was added.
- At subsection 304(c), language was changed to clarify that the light and power business has the authority to determine whether a system's generated electricity can operate in parallel with transmission and distribution systems.
- Language in subsection 305(b) regarding the specifics of how or when the system's generated electricity is measured by the light and power business was deleted. The requirement is now that the system's generated annual gross production must be "measured by each light and power business' standard

operating procedures...." This change is also made throughout the rule where required to be consistent, for example see the same language deleted at section 709.

- At section 601, the following sentence was added: "The lamination of the module must occur in Washington."

A cost-benefit analysis was not prepared under RCW 34.05.328 because this is not a significant legislative rule as defined in RCW 34.05.328.

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: January 15, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-17-004, filed 8/5/10, effective 9/5/10)

WAC 458-20-273 Renewable energy system cost recovery. (1) **Introduction.** This ~~((section))~~ rule explains the renewable energy system cost recovery program provided in RCW 82.16.110 through ~~((82.16.140))~~ 82-16-130. This program authorizes ~~((a customer investment cost recovery))~~ an incentive payment ~~((incentive payment))~~ based on production to ~~((help))~~ offset the costs associated with the purchase ~~((and use))~~ of renewable energy systems located in Washington state that ~~((produce))~~ generate electricity. Qualified renewable energy systems include:

- Solar energy systems;
- Wind generators; and
- Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

~~((a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.~~

~~((b) Participation by a light and power business in this incentive payment program is discretionary.~~

~~(e) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.~~

~~(2) Definitions.) (2) This rule is divided into eight different parts based on subject matter category. The eight parts to this rule are as follow:~~

- ~~Part I – Definitions;~~
- ~~Part II – Participation requirements;~~
- ~~Part III – Application requirements;~~
- ~~Part IV – General provisions;~~
- ~~Part V - Computation of the amount of the incentive payment;~~
- ~~Part VI – Manufactured in Washington state;~~
- ~~Part VII – Tax issues;~~
- ~~Part VIII – Appeal rights.~~

PART I-DEFINITIONS

The definitions in this ~~(section)~~ part apply throughout this ~~(section)~~ rule unless the context clearly requires otherwise.

~~((a)) (101) "Administrator" means an owner and assignee of a community solar project defined in ((e)(i) and (iii)) (103)(a) and (c) of this (subsection) part, that is responsible for applying for the (investment) cost recovery incentive on behalf of the (other) system's owners and performing such administrative tasks on behalf of the (other) owners as may be necessary; such as receiving (investment) the cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to (other) the owners.~~

~~((b)) (102) "Applicant" has the following three meanings in this definition.~~

~~((i)) (a) For other than community solar projects, applicant means an individual, business, or local government(-) that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."~~

~~((ii)) (b) For purposes of a community solar project defined in ((e)(i) or (iii)) (103)(a) or (c) of this (subsection) part, the administrator, defined in ((a)) (101) of this (subsection) part, is the applicant.~~

~~((iii)) (c) For purposes of a utility-owned community solar project defined in ((e)(ii)) (103)(b) of this (subsection) part, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.~~

~~((e)) (103) "Community solar project" means any one of the three definitions, below:~~

~~((i)) (a) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.~~

~~((ii)) (b) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on~~

their utility bill for their share of the value of the electricity generated by the solar energy system.

~~((iii)) (c) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for ((an investment)) a cost recovery incentive payment for the same customer-generated electricity as defined in ((e)) (105) of this (subsection) part.~~

~~((A)) (i) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.~~

~~((B)) (ii) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.~~

~~((d)) (104) For purposes of "community solar project" as defined in ((e)) (103) of this (subsection) part, the following definitions apply.~~

~~((i)) (a) "Capable of generating up to seventy-five kilowatts of electricity" means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.~~

~~((ii)) (b) "Company" means an entity that is:~~

~~((A)(i)) (i)(A) A limited liability company created under the laws of Washington state;~~

~~((H)) (B) A cooperative formed under chapter 23.86 RCW; or~~

~~((HH)) (C) A mutual corporation or association formed under chapter 24.06 RCW; and~~

~~((B)) (ii) Not a "utility" as defined in ((d)(v)) (g) of this (subsection) part.~~

~~(iii) A limited partnership, trust, or other entity not listed in (b)(i)(A) through (C) of this part does not qualify as a "company."~~

~~(c) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean two or more individuals, households, nonprofit organizations, or nonutility businesses that ((are:~~

~~• Located)) reside on a property or have a business located on a property within the service area of the light and power business where the renewable energy system is located((-and~~

~~• Residents of Washington state)).~~

~~((iv)) (d) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.~~

~~((v)) (e) "Owned in fee simple" means ((an interest in land that is)) the broadest property interest allowed by law.~~

~~((vi)) (f) "Solar energy system" includes both a module-based solar energy system and a stirling converter-based solar energy system.~~

~~(g) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.~~

~~((e))~~ (105) **"Customer-generated electricity"** means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, ~~(businesses)~~ business, or local government's ~~(or utility's real)~~ property and the ~~(real)~~ property involved is served by a light and power business.

~~((f))~~ (a) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. ~~(For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity.")~~

~~((g))~~ (b) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

~~((h))~~ (106) **"Local governmental entity"** means any unit of local government of Washington state ~~((including))~~.

(a) What is an example of a local governmental entity? A local governmental entity includes, but is not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

(b) What is not a local governmental entity? "Local governmental entity" does not include a state ~~((or))~~ federal, or tribal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; ~~((and))~~
- Federal-owned building; and
- Tribal-owned building.

~~((i))~~ (107) **"Light and power business"** means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

~~((j))~~ (108) **"Gas distribution business"** means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

~~((k))~~ (109) **"Photovoltaic cell"** means a device that converts light directly into electricity without moving parts.

~~((l))~~ (110) **"Renewable energy system"** means:

- A solar energy system used in the generation of electricity;
- An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or
- A wind generator used for producing electricity.

~~((m))~~ (111) **"Solar energy system"** means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

~~((n))~~ (112) **"Solar inverter"** means the device used to convert direct current to alternating current in a ~~(photovoltaic-cell)~~ solar energy system.

~~((o))~~ (113) **"Solar module"** means the smallest non-divisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

~~((p))~~ (114) **"Stirling converter"** means a device that produces electricity by converting heat from a solar source using a stirling engine.

PART II - PARTICIPATION REQUIREMENTS

(201) Participation by a light and power business in this incentive payment program is voluntary.

(202) Any individual, business, local government, or participant in a qualifying community solar project that owns such a system or is a participant of a community solar project that owns such a system may participate in this incentive payment program.

(203) A state governmental entity, a federal governmental entity, or a tribal governmental entity cannot participate in the incentive payment program.

(204) Who may receive an incentive payment? ~~((Any of the following may receive an incentive payment:~~

(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or

(b) A participant in a community solar project with an ownership interest in the:

- ~~Solar energy system;~~
- ~~Company that owns the solar energy system; or~~
- ~~Value of the electricity produced by the solar energy system.~~

(4)) Incentive payments may be received by:

• Customers of a light and power business that own a renewable energy system that produces "customer-generated electricity"; or

• Participants in a community solar project that owns a renewable energy system that produces "customer-generated electricity."

(205) Must ~~((you))~~ the owner of the property on which the renewable energy system is located be a customer of ~~((a))~~ the light and power business ~~((to be a recipient of an incentive payment))~~? Yes, only ~~((owners of qualifying))~~ renewable energy systems that produce "customer-generated electricity" located on interconnected properties ~~((belonging to))~~ owned by customers of ~~((a))~~ the light and power business serving the area in which the system is

located are eligible ~~((to receive))~~ for participation in this incentive ~~((payments. This is because the))~~ program.

(206) Electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems.

(207) In the case of community solar projects, the ~~((land))~~ property on which the renewable energy system is located ~~((may be))~~ is either:

- Owned in fee simple by a hosting local governmental entity; or

- Owned ~~((in fee simple))~~ or leased by ~~((a))~~ the utility ~~((and they will be the customer of the light and power business.~~

~~(5))~~ that owns the system.

(208) The host of a community solar project must be:

- A customer of the light and power business serving the area in which the system is located; or

- The utility that owns the system located in its service area.

(209) The participants in a nonutility community solar project are not required to be customers of the light and power business serving the area in which the system is located but the local governmental entity hosting the community solar system must be a customer of that light and power business.

(210) Utility-owned community solar projects are voluntarily funded by the utility's ratepayers and only the utility's ratepayers may be participants.

(211) Eligible participants of a nonutility community solar project described under RCW 82.16.110 (2)(a)(i) are limited to local individuals, households, nonprofit organizations, or nonutility businesses. Therefore, to qualify:

- As "local" the participant must reside or have a business located on a property served by the same light and power business serving the area in which the system is located; and

- If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in the one household will only receive one five thousand dollar annual limit.

(212) Eligible participants of a nonutility community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for participant eligibility and the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity.

PART III - APPLICATION REQUIREMENTS

(301) **To whom do I apply?** An applicant must apply to the light and power business serving the ~~((real))~~ property on which the renewable energy system is located. The applicant applies for an incentive payment based on the measured customer-generated electricity during each fiscal year beginning on July 1st and ending on June 30th. ~~((Participation by a light and power business in the cost recovery incentive program is voluntary. An applicant should first contact their light and power business to verify that it is participating~~

~~(6))~~ (302) **Do I need ~~((a))~~ an approved certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification ~~((request))~~ in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification, found at the department of revenue's web site at ~~((www.dor.wa.gov))~~ <http://dor.wa.gov>, entitled:

- Community Solar Project Renewable Energy System Cost Recovery Certification; and

- Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certifications ~~((requests with))~~ and may request assistance from the climate and rural energy development center ~~((a))~~ ~~((also known as the Washington State University extension energy program))~~ concerning technical equipment requirements.

(c) In the case of community solar projects:

- Only one certification can be obtained for each system;

- Applicants may rely upon a prior issued certification of the system;

- The administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses;

- The company acting as an administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and

- The utility acting as administrator must apply for approval of the certification if it is a utility-owned community solar project on property owned or leased by the utility.

(d) **Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must ~~((reapply for))~~ submit a new certification ~~((as the new owner with))~~ to the department of revenue.

(e) **Additions or changes to an existing certified system.** If the owner of an existing certified system adds to or makes other changes to the system, then the owner must apply to the department of revenue for approval of a new certification.

(f) **Requirements of the certification ~~((request))~~.** ~~((This))~~ The certification ~~((request))~~ must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) The applicant must be the owner of the renewable energy system, the administrator of a community solar project, or the company that owns the system in a company-owned community solar project.

(B) If the applicant is an administrator of a community solar project, the certification ~~((request))~~ must also include the current name and address of each of the participants in the community solar project.

~~((B))~~ (C) If the applicant is a company that owns a community solar project that is acting as an administrator, the

certification (~~(request)~~) must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) ~~(Any solar inverters and solar modules manufactured in Washington state;~~

~~(B))~~ A wind generator powered by blades manufactured in Washington state;

~~((C))~~ (B) A wind generator with an inverter manufactured in Washington state;

~~((D))~~ (C) A solar inverter manufactured in Washington state;

~~((E))~~ (D) A solar module manufactured in Washington state;

(E) A solar stirling converter manufactured in Washington state;

(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

~~((F))~~ (g) **Response from the department of revenue.**

Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered ~~((by))~~ either by mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center ~~((to determine eligibility for the incentive))~~ (also known as the Washington State University extension energy program) for technical advice regarding the renewable energy system and its components.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)~~((m))~~(L).

~~((7))~~ (h) **What happens if the department of revenue notifies me that the original certification does not qualify for an incentive payment or provides me notice of intent to revoke approval of a certification?** The department of revenue may deny or revoke the approval of a system's certification and you may appeal this final determination. The appeal provisions under Part VIII of this rule apply here.

(303) How often do I apply to the light and power business? You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment

applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

~~((8))~~ (304) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications ~~((are))~~ found at the department of revenue's web site at www.dor.wa.gov, are entitled:

- Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and
- Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) **Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center (also known as the Washington State University extension energy program) to ~~((determine eligibility for the))~~ receive technical advice regarding this incentive payment program.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)((m)) (l).

(c) **Light and power business may verify whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue) whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity cannot be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling. The fact that the system has received a certification for this incentive program has no impact on this determination.

~~((9))~~ (305) What are the ~~((possible))~~ procedures an applicant and their light and power business ~~((may))~~ follow in setting up incentive payments? This ~~((subsection))~~ section first discusses ~~((recommended))~~ procedures an applicant ~~((should))~~ follows when requesting that the light and power businesses set up an applicant's incentive payments and ~~((second))~~ then discusses the ~~((possible))~~ procedures the light and power business ~~((may))~~ follows.

(a) **Steps an applicant ~~((may))~~ must take if the light and power business is voluntarily participating in the incentive program include, but are not limited to:**

~~((Contacting their light and power business to ask whether it is participating and what application procedures apply;))~~

- Submitting an application to the light and power business that serves ~~((their))~~ the property where the renewable energy system is located;

- Submitting to the light and power business proof that the applicant's renewable energy system ~~((is certified))~~ certification was approved by the department of revenue for the incentive payment program;

- Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

- Signing an agreement that the light and power business will provide to the applicant.

(b) **Steps the applicant's local light and power business ~~((may))~~ must take if it is voluntarily participating in the incentive program include, but are not limited to:**

~~((Sending a utility serviceman to inspect the system;))~~

- ~~((Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly))~~ Measure the system's annual gross production by the light and power business' standard operating procedure;

~~((Reading the applicant's production meter at least annually;))~~

- Processing the annual incentive payment;

- Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

- Calculating annual ~~((production))~~ incentive payments based on the ~~((meter reading or readings made prior to the accounting date of July 1st))~~ system's measured annual gross production; and

- ~~((Sending))~~ Paying the applicant's incentive payment on or before December 15th.

The light and power business may pay the applicant's incentive payment by either sending a check ~~((on))~~ or ~~((before December 15th; and~~

- ~~Alternatively, the light and power business may credit)~~ crediting the applicant's account ~~((on or before December 15th))~~. However, if the applicant is a net generator, that applicant must be paid by check. ~~((Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.~~

~~((10))~~ (306) How may the procedures differ ~~((with my light and power business))~~ when dealing with a utility-owned solar energy system? A utility-owned community solar project is voluntarily funded by ratepayers of the specific ~~((light and power business))~~ utility offering the program. A utility for purposes of this incentive program is a specific type of light and power business, electric cooperative, or mutual corporation that provides retail electric service to customers. A light and power business, electric cooperative, or mutual corporation that generates electricity but only sells power to wholesale customers does not qualify as a utility for this incentive program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support, the utility gives contributors a payment or credit on their utility bills for the value of the electricity produced by the project. It is important that the customer-ratepayers realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayers and the utility and this agreement is a contract. Customer-ratepayers need to protect their interest in this investment the same as a person would in any other investment.

~~((11))~~ (307) What is the formal agreement between the applicant and the light and power business? The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

- Contain the necessary safety requirements and interconnection standards;

- Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

- Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

- Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

- Contain a statement allowing the department of revenue to send proof of the applicant's system certification elec-

tronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

- Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and
- In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

PART IV - GENERAL PROVISIONS

((12)) (401) Is there a time limitation of when incentive payment may be made for a system's generated electricity? Yes, incentive payments may only be made for kilowatt-hours generated on or after July 1, 2005, through June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(402) Who must own the property on which the renewable energy system is located to qualify for incentive payments? The answer depends on whether the renewable energy system is singly owned or community owned.

(a) Single-owned systems, meaning systems owned by individuals, businesses, and a local governmental entity that is not in the light and power business, must be located on property owned by the same person that owns the system. Thus, single-owned systems must have a unity of ownership between the owned property on which the system is located and the owned system.

(b) There are three types of community solar projects that have different property ownership requirements.

- The standard community solar project described by RCW 82.16.110 (2)(a)(i) and the company-owned community solar project described in RCW 82.16.110 (2)(a)(iii) require that the hosting local governmental entity own the property on which the system is located in fee simple. A solar energy system located on property owned in fee simple by a cooperating local governmental entity that is owned by local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify for the incentive program.

- The utility-owned community solar project described in RCW 82.16.110 (2)(a)(ii) requires that the utility either own or lease the property on which the system is located.

(403) Must the renewable energy system be owned or can it be leased? The renewable energy system must be owned by the ~~((individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community solar project, or company in a company-owned system))~~ customer receiving the incentive payments from a single-owned system's generated electricity or by the community solar project's company, utility owner, or local owners receiving the incentive payments from a community-owned system's generated electricity. Leasing a renewable energy system does not constitute ownership.

(404) May the purchase of the renewable energy system be financed? Yes, the purchase of a renewable energy

system through financing that uses standard practices of the lending industry will not disqualify the owner from participation in this incentive program.

((13)) (405) Must you keep records regarding your incentive payments? Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) Examination of records. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) Overpayment. If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) Underpayment. If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

((14)) (406) Do condominiums or community solar projects need more than one meter? No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(407) When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation? In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

- Separate meters;
- Separate inverters;
- Separate certification documents submitted to the department of revenue; and
- Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded

by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(408) Are the renewable energy system's environmental attributes transferred? The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. RCW 82.16.120(8). An environmental attribute is often designated as a renewable energy credit and gives the holder of the credit the benefits from the generation of the new power from a renewable source. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

PART V - COMPUTATION OF THE AMOUNT OF THE INCENTIVE PAYMENT

(501) How is an incentive payment computed? The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

- Fifteen cents per economic development kilowatt-hour; or
- Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) Economic development factors. For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules or stirling converters manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment, or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) What if a ~~((solar))~~ renewable energy system has both a module and inverter manufactured in Washington state, both a stirling converter and inverter manufactured in Washington state, or ~~((a wind generator has))~~ both blades and inverter manufactured in Washington state? In these ~~((two))~~ three situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. ~~((Further))~~ The incentive payment is calculated the same in a situation involving a solar stirling converter and inverter, resulting in a combined factor of three and six-tenths (3.6) (computed 2.4 plus 1.2). However, if your wind generator has both blades and an inverter manufactured in Washington state you would multiply the fifteen cent ~~((s))~~ base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to ~~((get))~~ calculate your incentive payment rate and then multiply this by the kilowatt-hours generated ~~((to get))~~ for the incentive payment amount.

(d) Tables for use in computation. The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules <u>or</u> <u>solar <u>stirling converters</u></u> manufactured in Washington state Factor: 2.4 (two and four-tenths)	\$0.36		

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar or wind generating equipment with an inverter manufactured in Washington state Factor: 1.2 (one and two-tenths)	\$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state Factor: 1.0 (one)	\$0.15		
All other electricity produced by wind Factor: 0.8 (eight-tenths)	\$0.12		
Both solar modules and inverters manufactured in Washington state. Factor: (2.4 + 1.2) = 3.6	\$0.54		
Wind generator equipment with both blades and inverter manufactured in Washington state. Factor: (1.0 + 1.2) = 2.2	\$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules <u>or solar stirling converters</u> manufactured in Washington state Factor: 2.4 (two and four-tenths)	\$0.72		
Solar equipment with an inverter manufactured in Washington state Factor: 1.2 (one and two-tenths)	\$0.36		
Other solar equipment Factor: 1.0 (one)	\$0.30		
Both solar modules and inverters manufactured in Washington state. Factor: (2.4 + 1.2) = 3.6	\$1.08		

(e) **Examples to illustrate how incentive payments are calculated.** Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar energy system has a module or solar stirling converter manufactured in Washington state ~~((and))~~ combined with an inverter manufactured out-of-state the computation would be as follows: $(0.15 \times 2.4) \times 2,500 = \900.00 .

(ii) If a noncommunity solar energy system has an out-of-state module ~~((and))~~ or solar stirling converter combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(iii) If a noncommunity solar energy system has ~~((both))~~ modules ~~((and))~~ or solar stirling converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (2.4 + 1.2)) \times 2,500 = \$1,350.00$.

(iv) If wind generator equipment has out-of-state blades ~~((and))~~ combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(v) If wind generator equipment has blades manufactured in Washington state ~~((and))~~ combined with an out-of-state inverter the computation would be as follows: $(0.15 \times 1.0) \times 2,500 = \375.00 .

(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (1.0 + 1.2)) \times 2,500 = \825.00 .

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: $(0.15 \times 0.8) \times 2,500 = \300.00 .

(viii) If a community solar energy system has ~~((a))~~ modules or a solar stirling converter manufactured in Washington state ~~((and))~~ combined with an out-of-state inverter the computation would be as follows: $(0.30 \times 2.4) \times 2,500 = \$1,800.00$.

(ix) If a community solar energy system has ~~((an))~~ out-of-state modules ~~((and))~~ or solar stirling converters combined with an inverter manufactured in Washington state the computation would be as follows: $(0.30 \times 1.2) \times 2,500 = \900.00 .

(x) If a community solar energy system has both modules ~~((and))~~ or solar stirling converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: $(0.30 \times (2.4 + 1.2)) \times 2,500 = \$2,700.00$.

~~((15))~~ **(502) Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) Applicant limit. No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year. If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in one household will only receive one five thousand dollar annual limit.

(b) Community solar projects.

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

• Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for purposes of the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity and combining the owners' interests from all eligible systems under this incentive program when determining whether any of the individual owners exceed their five thousand dollar annual limit.

PART VI - MANUFACTURED IN WASHINGTON STATE

(601) What constitutes manufactured in Washington? ~~((The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However,))~~

(a) For a solar inverter, solar module, stirling converter, or wind blade to qualify as manufactured in Washington state, the manufactured component must meet these definitions.

• "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

• "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. The lamination of the modules must occur in Washington state.

• "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

• "Wind blade" is the portion of the rotor component of wind generator equipment that converts wind energy to low speed rotational energy.

(b) Is combining products manufacturing? When determining whether an inverter, module, stirling converter, or blades are manufactured in Washington the department of revenue ((will apply the definition of manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification)) considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity:

(i) The ingredients are purchased from various suppliers;

(ii) The person combining the ingredients attaches his or her own label to the resulting product;

(iii) The ingredients are purchased in bulk and broken down to smaller sizes;

(iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(v) The person combining the items does not sell the individual items except within the package.

~~((16))~~ **(602) How can an applicant determine the system's level of manufacture in Washington state?** ~~((For systems installed after the date this section is adopted,))~~ The manufacturer must request approval from the department of revenue of its certification that the manufacturer's product, such as an inverter, module, stirring converter, or wind blade qualifies as made in Washington state. The manufacturer must supply the department of revenue with a statement delineating the ~~((system's))~~ product's level of manufacture in Washington state, signed under penalty of perjury.

(a) **Field visit to view manufacturing process.** The department of revenue will perform a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

- An inspection of the process by an engineer or other technical expert;

- Testing and evaluation of a product pulled off the production line;

- Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

- Inspection of the production line; and

- Requests for clarification concerning questions, if any, discovered during the inspection.

(b) **Approval or disapproval of manufacturer's certification.** The department of revenue will issue a ~~((binding letter ruling to the manufacturer stating its determination))~~ written approval or disapproval of the manufacturer's certification of a product qualifying as made in Washington state.

~~((a))~~ (c) **Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the ~~((system))~~ product for one or more of the multiplying economic development factors discussed in subsection ~~((13))~~ (14) of this section. The manufacturer can request ~~((a binding letter ruling))~~ an approval of its certification from the department of revenue at ~~((this))~~ its web address:

http://dor.wa.gov/content/contactus/eon_TaxRulings.aspx.

~~((b))~~ (d) **Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

~~((e))~~ (e) **Inspection of product's manufacturing process.** The department of revenue reserves the right to perform an inspection of the manufacturing processes for each product, such as an inverter, module, wind blade, or solar stirring

converter, that has been previously certified as manufactured in Washington state. This is to verify that the product continues to qualify as manufactured in Washington state. This inspection will not occur more than once a year and will include a field visit as described in (a) of this subsection.

(f) **Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

~~((d))~~ **Certificate of manufacture in Washington state.** If the department of revenue has issued a binding letter ruling stating a module, inverter, or blades qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy development center at Washington State University energy program for a certificate stating the same.

~~((7))~~ (g) **Denial or revocation of approval of certification.** The department of revenue may revoke the approval of certification that a product, such as an inverter, module, stirring converter, or wind blade is "made in Washington state" when it finds that the product does not qualify for certification as manufactured in Washington state.

The appeal provisions under Part VIII of this rule apply here.

(603) What about guidelines and standards for manufactured in Washington? The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

~~((18))~~ **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(19) Is there an annual limit on an incentive payment to one payee? There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) **Community solar projects.**

- Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

(20) Are the renewable energy system's environmental attributes transferred? Except for utility-owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

(21) Is the light and power business allowed a tax credit for the amount of incentive payments made during the year? A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

- The credit must be taken in a form and manner as required by the department of revenue.

- The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

- Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power

business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

- Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

Taxable Power Sales by the light and power business	Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)	Maximum amount of tax credit available for incentive payments in a utility-owned community solar project	Maximum amount of tax credit available for incentive payments in a company-owned community solar project
\$5,000,000	\$100,000	\$25,000	\$5,000
\$50,000,000	\$250,000	\$62,500	\$12,500
\$500,000,000	\$2,500,000	\$625,000	\$125,000

- The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

- Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(22) When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation? In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

- Separate meters;
- Separate inverters;

- Separate certification documents submitted to the department of revenue; and

- Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(23) What if a light and power business claims an incentive payment in excess of the correct amount? For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

- The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

- Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to

the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.)

PART VII - TAX ISSUES REGARDING RENEWABLE ENERGY INCENTIVE PROGRAM

~~((24))~~ (701) **Does the department of revenue consider the incentive payment ((taxable)) gross income subject to Washington state taxation?** ~~((No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.~~

(25)) The answer will depend on whether the electricity is generated by a singly owned system or a community solar system.

(a) **Are singly owned renewable energy systems subject to the B&O tax?** No. The incentive payments for the electricity generated by the singly owned systems are not taxable. This is because that person is not engaged in an activity with the object of gain, benefit, or advantage. All the electricity generated by the system is consumed by the system's owner on that person's own property. This is an energy conservation activity involving that person's own property.

(b) **Do incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to the business and occupation tax?** Yes. The incentive payments for the electricity generated by the nonutility community solar systems are taxable. Nonutility community solar projects are engaged in a business activity because the project involves the object of gain, benefit, or advantage to the project's owners. The energy generated by the solar system is not consumed by the system owner at its property, but is instead purchased and consumed by the system's host at the host's property. The sole benefit to the system's owners is the income from the electricity generated. Therefore, all incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to tax.

(702) **When must a nonutility community solar project register and file a return with the department?** A nonutility community solar project receiving incentive payments under the incentive program will need to register with the department of revenue unless its annual gross income is below the exemption amount for requiring registration. WAC 458-20-101(2) explains that a business whose gross income from all business activities is under the annual exemption amount is not required to register, so long as other requirements are met.

(703) **If a community solar project has gross income above the annual exclusion amount and is required to register, does it then owe tax?** Even some community solar projects that receive gross income above the annual exclusion amount or are otherwise required to register with the department may still not owe any tax. This is because of the small business credit provided by RCW 82.04.4451 that applies to the business and occupation tax. Consequently, many smaller community solar projects may be able to apply the small business tax credit to offset their business and occupation tax liability.

(704) **If I owe business and occupation tax after applying the small business credit, what is the tax category?** If there is gross income in excess of the small business

credit, the category under the business and occupation tax would be "service and other."

(705) **What other payments received by a nonutility community solar project are gross income possibly subject to tax?** The payments from sales of electricity to the hosting local governmental entity that a nonutility community solar project receives for the consumption by the hosting local governmental entity of the electricity generated by the community-solar system is gross income to the community solar project. The amount of the gross income from the host's consumption of the system's generated electricity is the value of that electricity. This is the contractually agreed value between the parties or the equivalent retail value generally charged by the light and power business serving the property. This gross income is subject to the public utility tax since it is income from a system for the generation of electrical energy. RCW 82.16.010 and 82.16.020. However, the public utility tax has an exemption amount described at RCW 82.16.040 that may apply.

(706) **Are the fees paid by members of the company in a company-owned community solar project subject to state taxation?** Yes, administrative fees that the company in a company-owned community solar project charges its members is gross income for the company. This gross income is subject to business and occupation tax under the "service and other" category.

(707) **Are the sale of renewable energy credits subject to state tax?** Yes, the sale of renewable energy credits constitute gross income subject to tax.

(a) If the renewable energy credits created by the community solar system are sold together with the electricity generated by the system, then both the electricity and renewable energy credits will be subject to public utility tax.

(b) However, if the sale of the renewable energy credits and system's generated electricity are sold and priced separately, then the renewable energy credits will be subject to the business and occupation tax under the "service and other" category and the generated electricity will be subject to public utility tax.

(708) **Is a nonutility community solar project subject to the leasehold excise tax?** Yes. The use of the local government's property that is hosting the community solar system is subject to leasehold excise tax, which is measured by the contract rent. This is because there is a private lease of publicly owned real property. Leasehold excise tax is in lieu of the property tax. Leasehold excise tax is measured by the maximum attainable contract rent received by the lessor paid for use of the public property. Contract rent is the amount of consideration due as payment for the leasehold interest. Consideration does not have to be in the form of cash. RCW 82.29A.020 and 82.29A.030.

(709) **What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of ~~((the customer investment cost recovery))~~ this incentive payment program, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

- Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;
- Each individual incentive payment is properly calculated;
- Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;
- Applicant payments are based on measured gross production of the renewable energy systems; and
- The credit and incentive payment limitations have not been exceeded.

(710) Is the light and power business allowed a tax credit for the amount of incentive payments made during the year? A light and power business will be allowed a credit against its public utility taxes in an amount equal to incentive payments made to its customers or participants in a nonutility community solar project in any fiscal year under RCW 82.16.120. The following restrictions apply:

- The credit must be taken in a form and manner as required by the department of revenue.
- The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.120 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (2)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business's taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollar credit limit, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

• Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (2)(a)(iii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollar credit limit, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that the light and power business can

claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

<u>Taxable power sales by the light and power business</u>	<u>Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)</u>	<u>Maximum amount of tax credit available for incentive payments in a utility-owned community solar project</u>	<u>Maximum amount of tax credit available for incentive payments in a company-owned community solar project</u>
\$5,000,000	\$100,000	\$25,000	\$5,000
\$50,000,000	\$250,000	\$62,500	\$12,500
\$500,000,000	\$2,500,000	\$625,000	\$125,000

• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(711) What if a light and power business claims an incentive payment in excess of the correct amount? For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

PART VIII - APPEALS RIGHTS

(801) What are the appeal rights under the renewable energy incentive payment program? There are four different types of actions that could result in a right to an appeal. The four types of actions are the department of revenue:

- Denying a system's certification;
- Revoking a system's certification;
- Denying a manufacturer's certification of a product qualifying as made in Washington state; and
- Revoking a manufacturer's certification of a product qualifying as made in Washington state.

(a) **Same appeal procedures for all four types of action.** The denial or revocation of a certification, described above, are all subject to the same appeal procedures described below. All the appeals involving this renewable energy incentive program are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(b) **File your appeal petition within thirty days of receiving notice of the department's action.** If you want to contest the department's action, you must file a timely appeal petition within thirty days of service of the notice of the agency action. RCW 34.05.010(19) defines "service" and includes both service by mail and personal service.

The notice issued by the department will provide you with an explanation of the department's reasons for the denial or revocation and advise you how you may appeal the decision if you disagree. The department's action will be final unless you file an appeal petition with the department within thirty days of service of the notice of the department's action. A form that may be used for contesting the action by the department is available from the department on its web site at <http://dor.wa.gov>, entitled: Appeal Petition.

(802) **Presiding officer - Final order - Review.** For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding will be the director, department of revenue, or such person as the director may designate. The presiding officer, whether the director of the department of revenue or such person as the director has designated, will make the final decision and will enter a final order as provided in RCW 34.05.461 (1)(b).

(803) **Petitions for reconsideration.** RCW 34.05.470 governs petitions for reconsideration and provides petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

(804) **Judicial review.** Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

WSR 14-03-084

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed January 16, 2014, 12:39 p.m., effective February 16, 2014]

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

Purpose: SB 5674 passed in the 2013 legislative session directs the board to adopt rules to implement beer and wine samplings at farmer's markets.

Statutory Authority for Adoption: RCW 66.24.170, 66.24.240, 66.24.244.

Adopted under notice filed as WSR 13-23-104 on November 20, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 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: January 15, 2014.

Sharon Foster
Chairman

NEW SECTION

WAC 314-20-018 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least forty-two inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

NEW SECTION

WAC 314-24-175 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least forty-two inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

WSR 14-03-099
PERMANENT RULES
GAMBLING COMMISSION

[Order 693—Filed January 17, 2014, 2:00 p.m., effective February 17, 2014]

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

Purpose: Ashford Gaming, LLC, submitted a petition for rule change requesting that a player be allowed to make an optional wager, in the game of Mini-Baccarat, on either the player hand or banker hand winning the next three consecutive games. Under the current rule, a player's win or loss must be determined during a *single* card game. Mini-Baccarat uses community cards where two shared hands are dealt to positions called the "bank" and the "player"; but unlike other card games, players are not dealt their own individual hands. Players bet on one of the two shared hands dealt, rather than on their own hand. The commissioners filed the petition for discussion at their September 2013 meeting and discussed it at their October 2013 meeting. The petitioner's proposed amendment was adopted at the January 2014 commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-040.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 13-19-057 filed on September 16, 2013.

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: January 17, 2014.

Susan Newer
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-044, filed 7/13/12, effective 8/13/12)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a card game to be authorized, it must be approved by the director or the director's designee and must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than four separate games with a single hand of cards. However, no more than three of the games may offer a wager that exceeds five dollars each. We con-

sider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game, except for:

(a) A carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot; and

(b) In the game of Mini-Baccarat, a player may make an optional wager on the player hand winning the next three consecutive games, or the banker hand winning the next three consecutive games.

WSR 14-03-104
PERMANENT RULES
DEPARTMENT OF COMMERCE
(Lead-Based Paint Program)

[Filed January 20, 2014, 10:48 a.m., effective February 20, 2014]

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

Purpose: The United States Environmental Protection Agency amended its regulatory code – 40 C.F.R., Part 745 Subpart E and Subpart L, effective October 4, 2011. In summary, the amendment includes changes to: Work practice standards, training firm and renovator recordkeeping requirements, and renovator paint chip sampling/reporting.

Reasons for Supporting Proposal: Department of commerce, lead-based paint program, is required by the United States Environmental Protection Agency to adopt these amendments into chapter 365-230 WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 365-230 WAC.

Statutory Authority for Adoption: RCW 70.103.030.

Adopted under notice filed as WSR 13-21-081 on October 14 [17], 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 11, 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: January 15, 2014.

Nick Demerice
Director of
External Relations

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-035 Application process. The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint activities training courses, or renovation and dust sampling technician courses:

(1) A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments.

(2) Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) A list of course(s) for which accreditation is being applied. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(c) The name and documentation of the qualifications of the training manager.

(d) The name(s) and documentation of qualifications of any principal instructor(s).

(e) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

(f) If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training manager shall submit a statement indicating the changes or additions and shall submit a copy of the new or changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

(g) If a training program does not use model training materials as described in (f) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

(h) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(i) All applications for accreditation shall include:

(i) A copy of the course test blueprint describing the portion of test questions devoted to each major course topic.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

(iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

(B) Procedures for the training manager's annual review of principal instructor competency.

(v) Documentation of accreditation by other state or federal agencies, if applicable.

(vi) A check or money order made out to the department of commerce in the amount as described in WAC 365-230-120.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-040 Requirements for the accreditation of training programs. For a training program to obtain accreditation from the department to offer lead-based paint activities courses, lead-based paint renovation courses or dust sampling technician courses, the program shall meet the following requirements:

(1) The training program shall employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults; and

(b) Successfully completed at least sixteen hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training for instructors of lead-based paint activities courses; or at least eight hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated the principal instructor.

(4) The following documents shall be recognized by the department as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in subsections (1), (2), and (3) of this section. This documentation (~~(need not)~~ must be submitted with the accreditation application, (~~(but, if not submitted, shall be)~~ and retained by the training program as required by the recordkeeping requirements contained in WAC 365-230-090. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting the education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(a) The inspector course shall last a minimum of twenty-four training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in WAC 365-230-050.

(b) The risk assessor course shall last a minimum of sixteen training hours, with a minimum of four hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in WAC 365-230-050.

(c) The supervisor course shall last a minimum of thirty-two training hours, with a minimum of eight hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in WAC 365-230-050.

(d) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements for the project designer course are contained in WAC 365-230-050.

(e) The abatement worker course shall last a minimum of sixteen training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in WAC 365-230-050.

(f) The renovator course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in WAC 365-230-050(6).

(g) The dust sampling technician course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in WAC 365-230-050(7).

(7) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in subsection (8) of this section.

(a) A unique identifier must be assigned to each student for them to use to launch and relaunch the course.

(b) The training provider must track each student's course log-ins, launches, progress, and completion, and

maintain these records in accordance with WAC 365-230-090.

(c) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least sixteen over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module.

(d) There must be at least twenty questions at the end of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test.

(e) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(8) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each ~~(individual)~~ student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in WAC 365-230-050.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

~~((8))~~ (9) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, address, and telephone number of the training program.

(b) The name, a unique identification number, and address of the individual.

~~((b))~~ (c) The name of the particular course that the individual completed.

~~((e))~~ (d) The language in which the course was taught.

(e) Dates of course completion/test passage.

~~((d) The name, address, and telephone number of the training program.)~~ (f) Course completion certificates for initial inspector, risk assessor, project designer, supervisor, or abatement worker are proof of successful course completion to take the state exam for a period of six months from the date of course completion.

(g) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than one square inch.

~~((9))~~ (10) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

~~((10))~~ ~~The training program shall offer~~ (11) Courses ~~((that)) offered by the training program must teach the work practice standards ((for conducting lead-based paint activities)) contained in WAC 365-230-200((-and shall offer the renovator or dust sampling technician courses)) and 365-230-330 as applicable in such a manner that ((teach)) trainees are provided with the knowledge needed to perform the renovations or the ((applicable work practice standards contained in WAC 365-230-200 and 365-233-330, as well as other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the)) lead-based paint activities ((and renovation or dust sampling they are)) they will be responsible for conducting.~~

~~((11))~~ (12) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

~~((12))~~ (13) The training manager shall allow the department to audit the training program to verify the contents of the application for accreditation as described in subsection (2) of this section.

(14) A course audit shall include, but not be limited to, a review of: Instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; coverage; and teaching facilities.

~~((13))~~ (15) An accredited training provider may not implement changes in method or content that affects one half-hour or more of contact instruction without ten business days advance notice of the changes to department.

~~((14))~~ (16) The training provider is responsible for ensuring that the training manager and principal instructor comply with the requirements of this rule.

~~((15))~~ (17) Whenever there is a change in either the training manager or principal instructor for an accredited training course, the training provider shall notify the department of this change within thirty days, along with documentation demonstrating the appropriate qualifications as described in this section.

~~((16))~~ (18) The training provider shall use a system for verifying the positive identification of all trainees. Trainees without proper identification may not take the course exam.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-050 Minimum training curriculum requirements. To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of

study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) Inspector.

(a) Role and responsibilities of an inspector.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(d) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.*

(e) Paint, dust, and soil sampling methodologies.*

(f) Clearance standards and testing, including random sampling.*

(g) Preparation of the final inspection report.*

(h) Recordkeeping.

(2) Risk assessor.

(a) Role and responsibilities of a risk assessor.

(b) Collection of background information to perform a risk assessment.

(c) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(d) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

(e) Lead hazard screen protocol.

(f) Sampling for other sources of lead exposure.*

(g) Interpretation of lead-based paint and other lead sampling results, including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards.*

(h) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(i) Preparation of a final risk assessment report.

(3) Supervisor.

(a) Role and responsibilities of a supervisor.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(d) Liability and insurance issues relating to lead-based paint abatement.

(e) Risk assessment and inspection report interpretation.*

(f) Development and implementation of an occupant protection plan and abatement report.

(g) Lead-based paint hazard recognition and control.*

(h) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(i) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*

(j) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*

(k) Clearance standards and testing.

(l) Cleanup and waste disposal.

(m) Recordkeeping.

(4) Project designer.

(a) Role and responsibilities of a project designer.

(b) Development and implementation of an occupant protection plan for large scale abatement projects.

(c) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(d) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(e) Clearance standards and testing for large scale abatement projects.

(f) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) Abatement worker.

(a) Role and responsibilities of an abatement worker.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state and local regulations and guidance that pertain to lead-based paint abatement.

(d) Lead-based paint hazard recognition and control.*

(e) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(f) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*

(g) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

(6) Renovator.

(a) Role and responsibilities of a renovator.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other federal, state and local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Procedures for using acceptable test kits to determine whether paint is lead-based paint.*

(e) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(f) Renovation methods to minimize the creation of dust and lead-based paint hazards.*

~~((f))~~ (g) Interior and exterior containment and clean-up methods.*

~~((g))~~ (h) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.*

~~((h))~~ (i) Waste handling and disposal.

~~((i))~~ (j) Providing on-the-job training to other workers.

~~((j))~~ (k) Record preparation.

(7) Dust sampling technician.

(a) Role and responsibilities of a dust sampling technician.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Dust sampling methodologies.*

(e) Clearance standards and testing.

(f) Report preparation.*

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-060 Requirements for the accreditation of refresher training courses. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may apply for accreditation of a refresher training course concurrently with its application for accreditation of an initial training course. All applications for accreditation of a refresher training course must follow the application process as described in WAC 365-230-035. To obtain department accreditation to offer refresher training, a training program must meet the requirements for accreditation of a training program as described in WAC 365-230-040, except for the minimum training-hour requirements in WAC 365-230-040 (6)(a) through (g). In addition, applicants for accreditation of a refresher training course must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in WAC 365-230-050, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(a) An overview of current safety practices relating to lead-based paint (~~(activities)~~) in general, as well as specific information pertaining to the appropriate discipline.

(b) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(c) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(2) Each refresher course, except for the project designer, renovator, and dust sampling technician course, shall last a minimum of eight training hours. Project designer, renovator, and dust sampling technician refresher courses shall last a minimum of four training hours.

(3) For ~~((each))~~ all other courses offered, the training program shall conduct a hands-on assessment ~~((if applicable))~~, and at the completion of the course, a course test.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-070 Reaccreditation of training programs. (1) Unless reaccredited, a training program's accreditation for both initial and refresher training courses shall expire four years after the date of issuance of the course accreditation.

(2) A training provider seeking reaccreditation ~~((should))~~ shall submit an application to the department no later than one hundred eighty days before its accreditation expires. If a training program does not submit its application by that date, the department cannot guarantee that the program will be reaccredited before the end of the accreditation period.

(3) The training program's application for reaccreditation shall contain:

(a) The training program's name, address, and telephone number.

(b) A list of courses for which it is applying for reaccreditation.

(c) The qualifications of the training program manager.

(d) The name(s) and qualifications of the principal instructor(s).

(e) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn or that affects more than thirty minutes of a training hour.

~~((f))~~ (f) A statement signed by the program manager stating:

(i) That the training program complies at all times with all the Requirements for the accreditation of training programs (WAC 365-230-040) and requirements for the accreditation of refresher training programs (WAC ~~((365-230-035 {365-230-060}))~~ 365-230-060), as applicable; and

(ii) The training program recordkeeping (WAC 365-230-090) and ~~((notification))~~ reporting requirements ~~((f))~~ of WAC 365-230-100~~((g))~~ shall be followed.

(4) Upon request, the training program shall allow the department to audit the training program to verify the contents of the application for reaccreditation as described in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-090 Training program recordkeeping requirements. (1) Accredited training programs shall maintain, and make available to the department if requested, the following records:

(a) All documents specified in the Requirements for the accreditation of training programs (WAC 365-230-040) as set forth in these rules that demonstrate the qualifications for training manager and principal instructors.

(b) Current curriculum, course materials and documents reflecting any changes made to these materials.

(c) The course test blueprint.

(d) Information regarding how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how skills are graded, what facilities are used, and the pass/fail rate.

(e) The quality control plan as described in the Requirements for the accreditation of training programs (WAC 365-230-040) as set forth in these rules.

(f) Results of student's hands-on skills assessments and course tests, and a copy of each student's course completion certificate.

(g) Any other material submitted as part of the program's application for accreditation.

(h) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course.

(i) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress and completion, and a copy of the electronic learning completion certificate for each student.

(2) The training provider (~~((shall))~~ must retain these records at the address specified on the training provider's accreditation application (or as modified as the result of notification of change of address) shall be retained a minimum of three years and six months.

(a) Records pertaining to renovator or dust sampling technician courses offered before April 22, 2010, must be retained until July 1, 2015.

(b) Records pertaining to renovator or dust sampling technician courses offered on or after April 22, 2010, must be retained for a minimum of five years.

(3) A training provider shall notify the department in writing within thirty days of changing the address specified on its training program accreditation, or transferring the records from that address.

(4) Accreditation is transferable in the case of acquisition of the accredited training provider by another entity. The new entity must notify the department within thirty days of the change of ownership and any other changes to information included in the original application.

(5) A training ~~((provider shall submit to the department the two notifications described in WAC 365-230-100.))~~ program must amend its accreditation within ninety days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within ninety days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(6) To amend an accreditation, a training program must submit a completed "Accreditation Application for Training Providers," signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(7) If the amendment includes a new training program manager, any new or additional principal instructor(s), or any permanent training locations, the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s), or at the new training location(s) until the department either approves the amendment or thirty days have elapsed, whichever occurs earlier. Except:

(a) If the amendment includes a new training program manager or a new or additional principal instructor that was identified in a training provider accreditation application that the department has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the department. The training provider may continue to provide training under the new training or offer courses taught by the new principal instructor if the department approves the amendment or if the department does not disapprove the amendment within thirty days.

(b) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent location on an interim basis as soon as the provider submits the amendment to the department. The training provider may continue to provide training at the new permanent training location if the department approves the

amendment or if the department does not disapprove the amendment within thirty days.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-100 Notification of lead-based paint training activity. (1) The training manager ~~((shall))~~ must provide notification of lead-based paint activities courses or renovator and dust sampling technician courses offered.

(a) The training manager must provide the department with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original ~~((notice))~~ notification must be received by the department at least seven business days prior to ~~((offering any lead-based paint activities or renovator and dust sampling technician))~~ the start date of any renovator, dust sampling technician, or lead-based paint activities courses.

(b) The training manager ~~((shall))~~ must provide the department updated ~~((notice))~~ notification when lead-based paint activities or renovator and dust sampling technician courses will begin on a date other than the ~~((one))~~ start date specified in the original notification, as follows:

(i) For lead-based paint activities or renovator and dust sampling technician courses beginning prior to the ~~((original))~~ start date provided to the department an updated ~~((notice))~~ notification must be received by the department at least seven business days before the ~~((revised))~~ new start date.

(ii) For lead-based paint activities or renovator and dust sampling technician courses beginning after the ~~((original))~~ start date ~~((an updated notice must be received by))~~ provided to the department, an updated notification must be received at least two business days before the ~~((original))~~ start date provided to the department.

(c) The training manager ~~((shall))~~ must update the department of any change in location of lead-based paint activities or renovator and dust sampling technician courses at least seven business days prior to the ~~((scheduled course))~~ start date provided to the department.

(d) The training manager ~~((shall also))~~ must update the department regarding any course cancellations, or any other change to the original ~~((notice))~~ notification. Updated ~~((notices))~~ notifications must be received by the department at least two business days prior to the ~~((scheduled course))~~ start date provided to the department.

(e) Each notice, including updates, shall include the following:

- (i) Notification type (original, update, cancellation).
- (ii) Training program name, department accreditation number, address, and phone number.
- (iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.
- (iv) Date(s) and time(s) of training.
- (v) Training location(s) phone number(;) and ~~((street))~~ address.
- (vi) Principal instructor's name.
- (vii) Training manager's name and signature.

(f) Notification ~~((shall))~~ must be accomplished using ~~((one))~~ any of the following methods: Written notification or

electronic. Notification of lead-based paint activities, renovator, or dust sampling technician course schedules can be accomplished by using either the sample form titled "Pre-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department at 360-586-5323, or on the internet at <http://www.commerce.wa.gov/lead>.

(g) Lead-based paint activities or renovator and dust sampling technician courses ~~((shall))~~ must not begin on a date, or at a location other than that specified in the original notice unless an updated ~~((notice))~~ notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated ~~((notice))~~ notification.

(h) No training program shall provide lead-based paint activities or renovator and dust sampling technician courses without first notifying the ~~((agency))~~ department of such activities in accordance with the requirements of this ~~((sub-section (1)(h)))~~ section.

(2) The training manager ~~((shall))~~ must provide notification following completion of lead-based paint activities or renovator and dust sampling technician courses.

(a) The training manager ~~((shall))~~ must provide the department with ~~((notice))~~ notification after the completion of any lead-based paint activities or renovator and dust sampling technician course that shall be received by the department no later than ten business days following course completion.

(b) The notice ~~((shall))~~ must include the following:

- (i) Training program name, department accreditation number, address, and phone number.
- (ii) Course discipline and type (initial/refresher).
- (iii) Date(s) of training.
- (iv) The following information for each student who took the course:

- (A) Name.
- (B) Address.
- (C) Course completion certificate number.
- (D) ~~((Student))~~ Course test score.
- (v) Training manager's name and signature.

(c) Notification shall be accomplished using one of the following methods: Written or electronic. Notification following lead-based paint activities, renovator, or dust sampling technician courses can be accomplished by using either the sample form titled "Post-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from depart-

ment at 360-586-5323, or on the internet at <http://www.commerce.gov/lead>.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-200 Work practice standards. (1)

Only certified individuals and the certified firms employing such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, (~~October, 1997~~) July, 2012); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)(g)(i) and (v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 C.F.R. part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

(5) Inspection. Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting history shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(i) Inspection date;

(ii) Building address;

(iii) Date of construction;

(iv) Apartment identification (numbers, letters, names if applicable);

(v) Name, address and telephone number of owner or owners of each unit;

(vi) Name, signature, and certification number of each inspector or risk assessor conducting testing;

(vii) Name, address and telephone number of the certified firm employing each inspector or risk assessor;

(viii) Each testing method and device or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and

(ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined using documented methodologies, and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be collected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

(7) Risk assessment. Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(i) Assessment date.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment identification (numbers, letters, names if applicable).

(v) Name, address and telephone number of each owner of each building.

(vi) Name, signature, and certification number of each risk assessor conducting the assessment.

(vii) Name, address and telephone number of the certified firm employing each risk assessor.

(viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure employed for paint analysis.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(8) Abatement. An abatement project shall be conducted only by certified individuals and the certified firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during postabatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

(b) The certified supervisor or project designer, as well as the certified firm employing that individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) A certified project designer may replace and assume the responsibilities of a certified supervisor required for an abatement project. If a certified project designer provides supervision on an abatement project, the project designer

shall be responsible for preparing the occupant protection plan and the abatement report.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

(g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but less than 250 parts per million (<250 ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete.

(h) Soil interim controls:

(i) Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering, but may be used as interim controls that eliminate contact with bare soils.

(ii) Interim control measures are acceptable in areas where bare soils contain less than the current HUD abatement standard (see 24 C.F.R. part 35.1330 (f)(2)) for lead in soils, except in:

(A) A child's play area, or any bare soil area where a child under six years of age regularly plays. Interim control measures are not acceptable in these areas where soil lead levels exceed 250 ppm.

(B) A garden area, or any other area where bare soils produce edibles intended for human consumption. Interim controls are not acceptable in these areas where soil lead levels exceed 250 ppm.

(ii) On-going monitoring and evaluation of interim soil control measures must ~~((follow))~~ adhere to HUD Guidelines ~~((Table 6.1, Standard Reevaluation Schedule Number 6, under the column header entitled, "Visual Survey," as a requirement for interim soils control. This requirement must be included in a written report provided to the owner and occupants of the property)), as found in chapter 6.~~

(i) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(ii) Following the visual inspection and any postabatement cleanup required in subsection (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Postabatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

(j) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stair-

wells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be re-cleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination refresher or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination refresher divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be re-cleaned and retested until clearance examination standards are met.

(v) The clearance levels for lead in dust are less than 40 $\mu\text{g}/\text{ft}^2$ for floors, less than 250 $\mu\text{g}/\text{ft}^2$ for interior window sills, and less than 400 $\mu\text{g}/\text{ft}^2$ for window troughs.

(k) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

(l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(m) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

(9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or postabatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of commerce:

Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

Telephone number: 360-586-5323

Web site: www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-300 Applicability. This section applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to WAC 365-230-130) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter (mg/cm²) or 0.5 percent by weight, where the firm performing the renovation has obtained a copy of the determination.

(2)(a) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in WAC 365-230-350 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5 percent by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) The information distribution requirements in WAC 365-230-320 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as nonroutine failures of

equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood-lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in WAC 365-230-330, 365-230-360, and 365-230-380 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of WAC 365-230-330 (1)(e), which must be performed by certified renovators or individuals trained in accordance with WAC 365-230-385 (1)(b), the cleaning verification requirements of WAC 365-230-330(2), which must be performed by certified renovators, and the recordkeeping requirements of WAC 365-230-340 (2)(f).

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-310 Definitions. For purposes of this chapter, the definitions in WAC 365-230-020 and the following definitions apply:

"Cleaning verification card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether postrenovation cleaning has been properly completed.

"Department" means the Washington department of commerce lead-based paint program.

"Dry disposable cleaning cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization.

"HEPA vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing (~~particles~~) particulates of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or twenty square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by WAC 365-230-330 (1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same thirty days must be considered

the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Painted surface to be disturbed" means a paint, or other surface coating that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

"Pamphlet" means the EPA pamphlet titled "*The Lead-Safe Certified Guide to Renovate Right*" developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet.

"Recognized test kit" means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligram per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined under WAC 365-230-200. The term renovation includes, but is not limited to: The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weatherstripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this section. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized state or tribal program.

"Vertical containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

"Wet disposable cleaning cloth" means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet mopping system" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing

or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Work area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-330 Work practice standards. (1) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed under WAC 365-230-370. The responsibilities of certified firms are set forth under WAC 365-230-360 and the responsibilities of certified renovators are set forth under WAC 365-230-380.

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the postrenovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 C.F.R. 35.1345 (b)(2) or 29 C.F.R. 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that

extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within twenty feet of the renovation. On multistory buildings, close all doors and windows within twenty feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

~~(D) ((In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.))~~ If the renovation will affect surfaces within ten feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below ~~((shall be))~~ are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines ~~((are used with a))~~ have shrouds or containment systems and are equipped with a HEPA ((exhaust control)) vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100(^{°F}) degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute

is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from noncontaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within two feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(2) Standards for postrenovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by recleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure:

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, reclean the windowsill as directed in this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and

wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for postrenovation cleaning verification. If the surface within the work area is greater than forty square feet, the surface within the work area must be divided into roughly equal sections that are each less than forty square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, reclean that section of the surface as directed in this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been recleaned, wait for one hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved postrenovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the postrenovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal or local law requires dust wipe sampling.

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this section.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to reclean the work area until the dust clearance sample results are below the

clearance standards in WAC 365-230-020 or any applicable local standard.

(4) Activities conducted after postrenovation cleaning verification. Activities that do not disturb paint such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after postrenovation cleaning verification has been performed.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-340 Recordkeeping and reporting requirements. (1) Firms performing renovations must retain and, if requested, make available to the department all records necessary to demonstrate compliance with this section for a period of three years following completion of the renovation. This three-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable state or tribal laws or regulations.

(2) Records that must be retained pursuant to subsection (a) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described under WAC 365-230-300. These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to this chapter).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described under WAC 365-230-320 (1)(a)(i) and (b)(i), (2)(a)(i), (3)(a)(i)(A) and (a)(ii)(A).

(c) Certifications of attempted delivery as described under WAC 365-230-320 (1)(a)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described under WAC 365-230-320 (1)(a)(ii) and (b)(ii), (2)(a)(ii), (3)(a)(i)(B) and (a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described under WAC 365-230-320 (2)(c) and (d), and renovations in child-occupied facilities, as described under WAC 365-230-320 (3)(b).

(f) Documentation of compliance with the requirements under WAC 365-230-330, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described under WAC 365-230-330(1), and that the certified renovator performed the postrenovation cleaning verification described under WAC 365-230-330(2). If the renovation firm was unable to comply with all of the requirements of this rule due

to an emergency as defined under WAC 365-230-330, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within twenty feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within twenty feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

~~((v))~~ (vi) Waste was contained on-site and while being transported off-site.

~~((vi))~~ (vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

~~((vii))~~ (viii) The certified renovator performed the postrenovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, the renovation firm must provide information

pertaining to compliance with this section to the following persons.

(i) The owner of the building; and, if different;

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multiunit target housing, renovation firms must post the information required by this section or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by this subsection may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required under subsection (2)(a)(ii) of this section and the training and work practice compliance information required under subsection (2)(f) of this section.

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted under WAC 365-230-330(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different;

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility;

(c) When performing renovations in common areas of multiunit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all the affected units.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-380 Renovator and dust sampling technician certification and recertification. (1) No individual shall perform lead-based paint renovation or dust sampling technician activities as described in this section unless they are certified by the department. Individuals seeking initial certification by the department to engage in lead-based paint renovation activities must successfully complete a dust sampling technician or renovator course accredited by the department. The course completion certificate serves as proof of training. Certified individuals may perform only lead-based paint renovation activities for which they are certified. To become certified as a renovator or dust sampling technician, an individual must:

(a) Submit a completed application to the department as described under WAC 365-230-150 and must provide documentation that the applicant has either:

(i) Met the certification requirements as described in this subsection for renovator or dust sampling technician.

(ii) Hold a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 C.F.R. 745.324.

(A) Applicants for certification based on certification from another state or tribal program must document to the department that they have read and understand the certification and work practice standards as described in these rules.

(B) Certification based on a valid lead-based paint renovator or renovation dust sampling technician certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(b) Submit two passport-size photos.

(c) A signed and dated renovator or dust sampling technician application.

(d) A check or money order made out to the department in the amount as described in the certification fees section of these rules.

(e) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by telephone, 360-586-5323, electronically at <http://www.commerce.wa.gov/> lead.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, may take an accredited refresher dust (~~wipe~~) sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(4) Individuals may first apply to the department for certification to engage in lead-based paint renovation or dust sampling pursuant to this section on or after the effective date of these rules.

(5) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as renovator, or dust sampling technician.

(6) Upon receiving the department certification, individuals conducting lead-based paint renovator or dust sampling technician activities shall comply with the work practice standards for performing the appropriate lead-based paint renovation activities as established in the work practice standards, WAC 365-230-330.

(7) It shall be a violation of these rules for an individual to conduct any of the lead-based paint renovator or dust sampling technician activities described in the work practice standards under WAC 365-230-330 who has not been certified by the department.

(8) To maintain renovator certification or dust sampling technician, an individual must complete a renovator refresher

course or a dust sampling refresher course accredited by the department within five years of the date the individual completed the initial course as described in subsection (1) of this section, or within five years of the date of his/her last refresher course for the discipline. If the individual does not complete a refresher course within this time, the individual must retake the initial course to become certified again.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-385 Renovator and dust sampling technician responsibilities. (1) Renovator responsibilities.

Certified renovators are responsible for ensuring compliance under WAC 365-230-330 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described under WAC 365-230-330(2) and must either perform or direct workers who perform all of the tasks described under WAC 365-230-330(1).

(b) Must provide training to (~~uncertified~~) workers on the work practices (~~that they will be using in performing their assigned tasks~~) required by WAC 365-230-330(1).

(c) Must be physically present at the worksite when signs required by WAC 365-230-330 (1)(a) are posted, while the work area containment required by WAC 365-230-330 (1)(b) is being established, and while the work area cleaning required by WAC 365-230-330 (1)(e) is performed.

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by WAC 365-230-330(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(g) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

(h) Must prepare the records required by WAC 365-230-340 (2)(a)(ii) and (f).

(2) Dust sampling technician responsibilities. When performing optional dust clearance sampling under WAC 365-230-330, a certified dust sampling technician:

(a) Must collect dust samples in accordance with WAC 365-230-200 (8)(f)(i) through (iv), must send the collected samples to a laboratory recognized under TSCA section 405(b) (National Lead Laboratory Accreditation Program (NLLAP)) as found under WAC 365-230-200 (7)(h), and must compare the results to the clearance levels in dust less than 40 µg/ft² on floors, less than 250 µg/ft² on windowsills, and less than 400 µg/ft² on troughs.

(b) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-360 Certification of renovation firms.

(1) No firm (~~shall offer to~~) may perform, offer, or claim to perform renovations for compensation any of the lead-based paint renovation activities described in WAC 365-230-330 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint renovation activities. The firm is responsible for ensuring that its employees follow the work practice requirements for renovation as described in WAC 365-230-330.

(2) A firm seeking certification shall submit to the department a completed application as described in this section.

(3) The firm shall maintain all records pursuant to WAC 365-230-340.

(4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership, and of any changes to information submitted on the original application.

(5) The certification period for renovation firms is five years from the date certification is issued. To maintain its renovation firm certification, a firm must be recertified by the department every five years.

(6) To retain certification, a firm shall submit to the department an application as described above prior to the expiration date listed on the firm's certification.

forth by the legislature in ESSB 5034 (2013-2015 biennial budget), changes need to be made to WAC 388-105-0005 including an increase to funding for adult family homes in relation to an increased license fee.

Adult family homes will be affected by this rule change.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.050 (3)(a).

Adopted under notice filed as WSR 13-22-038 on October 31, 2013.

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

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

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

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

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

Date Adopted: January 15, 2014.

Katherine I. Vasquez
Rules Coordinator

WSR 14-03-113

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed January 21, 2014, 1:18 p.m., effective February 21, 2014]

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

Purpose: WAC 388-105-0005 contains the rate table used to calculate the daily medicaid rate for adult family homes and assisted living facilities contracted to provide assisted living, adult residential care, and enhanced adult residential care. To comply with the budgetary directives put

AMENDATORY SECTION (Amending WSR 13-03-093, filed 1/15/13, effective 2/15/13)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE						
KING COUNTY						
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH	
	Add-on	Add-on				
A Low	\$65.58	\$71.00	\$46.51	\$46.51	\$((47.45))	<u>47.59</u>
A Med	\$70.97	\$76.39	\$52.71	\$52.71	\$((53.70))	<u>53.84</u>
A High	\$79.58	\$85.00	\$57.85	\$57.85	\$((59.96))	<u>60.10</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
B Low	\$65.58	\$71.00	\$46.51	\$46.51	\$(47.68) <u>47.82</u>
B Med	\$73.13	\$78.55	\$58.92	\$58.92	\$(60.25) <u>60.39</u>
B Med-High	\$82.76	\$88.18	\$62.62	\$62.62	\$(64.48) <u>64.62</u>
B High	\$87.10	\$92.52	\$71.52	\$71.52	\$(73.57) <u>73.71</u>
C Low	\$70.97	\$76.39	\$52.71	\$52.71	\$(53.70) <u>53.84</u>
C Med	\$79.58	\$85.00	\$66.05	\$66.05	\$(68.28) <u>68.42</u>
C Med-High	\$98.96	\$104.38	\$87.89	\$87.89	\$(89.12) <u>89.26</u>
C High	\$99.94	\$105.36	\$88.73	\$88.73	\$(90.35) <u>90.49</u>
D Low	\$73.13	\$78.55	\$71.09	\$71.09	\$(69.58) <u>69.72</u>
D Med	\$81.20	\$86.62	\$82.29	\$82.29	\$(84.93) <u>85.07</u>
D Med-High	\$104.87	\$110.29	\$104.52	\$104.52	\$(101.98) <u>102.12</u>
D High	\$112.97	\$118.39	\$112.97	\$112.97	\$(115.96) <u>116.10</u>
E Med	\$136.43	\$141.85	\$136.43	\$136.43	\$(139.90) <u>140.04</u>
E High	\$159.89	\$165.31	\$159.89	\$159.89	\$(163.85) <u>163.99</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$60.19	\$65.11	\$46.51	\$46.51	\$(47.45) <u>47.59</u>
A Med	\$63.43	\$68.35	\$50.64	\$50.64	\$(51.61) <u>51.75</u>
A High	\$77.43	\$82.35	\$55.18	\$55.18	\$(56.82) <u>56.96</u>
B Low	\$60.19	\$65.11	\$46.51	\$46.51	\$(47.68) <u>47.82</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med	\$68.80	\$73.72	\$55.82	\$55.82	\$((57.10)) <u>57.24</u>
B Med-High	\$77.88	\$82.80	\$59.33	\$59.33	\$((61.16)) <u>61.30</u>
B High	\$84.95	\$89.87	\$69.51	\$69.51	\$((71.52)) <u>71.66</u>
C Low	\$63.43	\$68.35	\$50.85	\$50.85	\$((51.99)) <u>52.13</u>
C Med	\$77.43	\$82.35	\$65.21	\$65.21	\$((66.64)) <u>66.78</u>
C Med-High	\$95.71	\$100.63	\$81.69	\$81.69	\$((82.88)) <u>83.02</u>
C High	\$96.67	\$101.59	\$86.87	\$86.87	\$((87.87)) <u>88.01</u>
D Low	\$68.80	\$73.72	\$70.12	\$70.12	\$((68.07)) <u>68.21</u>
D Med	\$79.00	\$83.92	\$80.65	\$80.65	\$((82.67)) <u>82.81</u>
D Med-High	\$101.44	\$106.36	\$101.95	\$101.95	\$((98.90)) <u>99.04</u>
D High	\$109.88	\$114.80	\$109.88	\$109.88	\$((112.22)) <u>112.36</u>
E Med	\$132.21	\$137.13	\$132.21	\$132.21	\$((135.01)) <u>135.15</u>
E High	\$154.54	\$159.46	\$154.54	\$154.54	\$((157.80)) <u>157.94</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
A High	\$77.43	\$82.67	\$54.30	\$54.30	\$((55.79)) <u>55.93</u>
B Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med	\$68.80	\$74.04	\$54.79	\$54.79	\$((56.06)) <u>56.20</u>
B Med-High	\$77.88	\$83.12	\$58.22	\$58.22	\$((59.98)) <u>60.12</u>
B High	\$84.95	\$90.19	\$65.77	\$65.77	\$((67.70)) <u>67.84</u>
C Low	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
C Med	\$77.43	\$82.67	\$61.66	\$61.66	\$((64.13)) <u>64.27</u>
C Med-High	\$95.71	\$100.95	\$78.58	\$78.58	\$((79.76)) <u>79.90</u>
C High	\$96.67	\$101.91	\$82.13	\$82.13	\$((83.16)) <u>83.30</u>
D Low	\$68.80	\$74.04	\$66.30	\$66.30	\$((64.43)) <u>64.57</u>
D Med	\$79.00	\$84.24	\$76.26	\$76.26	\$((78.23)) <u>78.37</u>
D Med-High	\$101.44	\$106.68	\$96.38	\$96.38	\$((93.58)) <u>93.72</u>
D High	\$103.88	\$109.12	\$103.88	\$103.88	\$((106.16)) <u>106.30</u>
E Med	\$124.99	\$130.23	\$124.99	\$124.99	\$((127.70)) <u>127.84</u>
E High	\$146.10	\$151.34	\$146.10	\$146.10	\$((149.25)) <u>149.39</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 14-03-132
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Division of Credit Unions)

[Filed January 22, 2014, 9:10 a.m., effective February 22, 2014]

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

Purpose: To address and provide standards for Washington state chartered credit unions when compensating their directors and supervisory committee members for services.

Statutory Authority for Adoption: RCW 31.12.365.

Other Authority: Chapter 34, Laws of 2013.

Adopted under notice filed as WSR 13-24-001 on November 20, 2013.

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 1, 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 1, 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: January 22, 2014.

Linda Jekel, Director
Division of Credit Unions

Chapter 208-400 WAC

CREDIT UNION CORPORATE GOVERNANCE

NEW SECTION

WAC 208-400-010 Reasonable compensation. (1) **Authority to compensate directors and supervisory committee members.** Subject to the provisions of this section, a credit union may pay compensation to its directors and supervisory committee members for their service as directors and supervisory committee members that is reasonable in accordance with subsection (4) of this section.

(2) **"Compensation."**

(a) As used in this section, "compensation" means anything of value that is both:

(i) Given to a director or supervisory committee member in exchange for services performed as a director or supervisory committee member; and

(ii) Required to be reported to the Internal Revenue Service as income.

(b) For purposes of this section, the term "compensation" excludes:

(i) Any advancement to or reimbursement to a director or supervisory committee member, or direct disbursement to a third party of reasonable expenses associated with credit union business-related travel of a director or supervisory committee member;

(ii) Payment of reasonable expenses associated with credit union business-related travel for one guest per director or supervisory committee member;

(iii) Payment for insurance coverage of a director or supervisory committee member, available to employees generally;

(iv) Payment of indemnification to a director or supervisory committee member and liability insurance coverage for directors and supervisory committee members; and

(v) Gifts to a director or supervisory committee member of minimal value.

(3) **Controls review.** A credit union shall implement and maintain appropriate controls to ensure that compensation is reasonable and that such compensation does not lead to material financial loss to the credit union. Such controls shall include, without limitation, the following:

(a) Prior to its initial determination to pay compensation to directors or supervisory committee members, or to increase any such payments, a credit union's board of directors shall in good faith review all policies related to compen-

sation, and shall review the amount of compensation provided to the directors and supervisory committee members.

(b) The review set forth in (a) of this subsection must:

(i) Contain a written determination that compensation paid to the directors and supervisory committee members is reasonable, including a discussion of the factors considered in making such determination; and

(ii) Be included as part of the minutes of the meeting at which matters relating to compensation were deliberated and voted upon by the credit union's board of directors.

(4) **When compensation is reasonable.** Compensation is reasonable if it meets all of the following criteria:

(a) It is proportional to the services provided by the director or supervisory committee member;

(b) It is reasonable considering the financial condition of the credit union; and

(c) It is comparable to compensation paid by comparable organizations of a similar size, location, and operational complexity.

(5) **Disclosure to credit union membership.**

(a) A credit union shall annually disclose to credit union members prior to its annual membership meeting the compensation provided to directors and supervisory committee members in the prior calendar year and as scheduled for the current calendar year.

(b) The disclosure to a credit union's members:

(i) Shall be in writing and conspicuously set apart from other information provided to members;

(ii) Shall include the names of all the directors and supervisory committee members receiving compensation and the amount of compensation paid to each in the prior calendar year;

(iii) Shall include the schedule for compensation to be paid to directors and supervisory committee members in the current calendar year; and

(iv) Shall be included in the notice of the annual meeting of the members, a separate mailing to members, a periodic statement of account to members, a periodic publication of the credit union to members, posted electronically on a credit union's web site, or through some other e-mail publication to members.

(6) **Notice to director.**

(a) A credit union shall provide written notice to the director of credit unions of its intent to adopt a policy to compensate directors or supervisory committee members at least sixty days before adopting such policy.

(b) In providing notice to the director of credit unions, a credit union shall provide any additional information as required by the director of credit unions.

(7) **Enforcement authority of director, prohibition.**

(a) The director may prohibit or otherwise limit or restrict the payment of compensation to directors or supervisory committee members if, in the opinion of the director, the payment of compensation has or is likely to have a materially adverse effect on the credit union.

(b) The director may also prohibit or limit compensation if a credit union fails to comply with this rule.