

WSR 15-19-014
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed September 3, 2015, 8:18 a.m., effective October 5, 2015]

Effective Date of Rule: October 5, 2015.

Purpose: These rules are needed to:

- Clarify that other flags, such as the POW/MIA flag, may be flown without the governor's permission when required or permitted by law;
- Clarify that the "state capitol grounds" are those areas designated by statute;
- Change the words "general administration" to "enterprise services"; and
- Repeal WAC 200-240-001. This rule is not needed to understand or implement this rule.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 200-240-001; and amending WAC 200-200-004, 200-240-010, and 200-240-020.

Statutory Authority for Adoption: Chapter 43.19 RCW.

Adopted under notice filed as WSR 15-14-114 on June 30, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: September 2, 2015.

Jack Zeigler
 Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-240-004 "State capitol grounds" defined. "State capitol grounds" shall be construed to be those grounds designated by ~~((statute as))~~ the state capitol committee as state capitol grounds~~((, including the east capitol campus, Sylvester Park and the old capitol building))~~.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-240-010 Flag plazas. The flag plazas on the east and west capitol campus are designated as the official locations for display of the United States and Washington state flags on the state capitol grounds. The United States flag

and the Washington state flag will be flown permanently at these locations.

The flags of visiting United States governors and dignitaries and other flags may be flown at these locations as required by law or at the discretion of the governor of the state of Washington.

~~((No other flags will be flown on any poles at the east or west capitol flag plazas.))~~

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-240-020 Display of flags on state buildings.

The United States flag and the Washington state flag may be displayed from buildings on the state capitol grounds in such place and in such manner as the director of ~~((general administration))~~ enterprise services may direct. No flags other than the United States flag and the Washington state flag may be displayed upon any pole or other place designated for the official display of flags, except as provided by law or ~~((directed by))~~ at the discretion of the governor of the state of Washington.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 200-240-001 Promulgation.

WSR 15-19-023
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 4, 2015, 12:01 p.m., effective October 5, 2015]

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

Purpose: WAC 308-391-101(1), eliminate counter hours from this rule, and post hours on the internet in lieu of.

WAC 308-391-202 and 308-391-203, the UCC program currently has about eighteen thousand fraudulent filings in the UCC database, with about four thousand added each year. Fraudulent filings are used to harass or defraud others, and can affect victim's ability to get credit. These records are non-consensual common law liens, as provided in RCW 60.70.030. The department of licensing has the duty to establish criteria via the rule-making process to reject and remove these lien filings. The proposed rule amendment is supported by the industry.

Citation of Existing Rules Affected by this Order:
 Amending WAC 308-391-101, 308-391-202, and 308-391-203.

Statutory Authority for Adoption: RCW 62A.9A-526.

Adopted under notice filed as WSR 15-15-015 on July 6, 2015.

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 3, Repealed 0.

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

Date Adopted: September 4, 2015.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

WAC 308-391-101 Methods to deliver UCC records—Time of filing. UCC records may be tendered for filing at the filing office as follows:

(1) Personal delivery at the filing office's street address. Delivery is accepted (~~between 8:00 a.m. and 5:00 p.m.~~) Monday through Friday except state holidays. Hours are posted on the filing office's web site on the internet. The file time for a UCC record delivered by this method is when the UCC record is first examined by a filing officer for processing, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.

(2) Courier delivery at the filing office's street address. Delivery by courier is considered personal delivery under subsection (1) of this section and the same rules apply.

(3) Postal service delivery to the filing office's mailing address. The file time for a UCC record delivered by this method is when the UCC record is first examined by a filing officer for processing, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.

(4) Electronic mail and telefacsimile delivery are not accepted.

(5) Electronic filing. UCC records may be transmitted electronically using the XML format prescribed by the filing office. The time of filing of a UCC record delivered by this method is the time the filing office's information management system determines that all the required elements of the transmission have been received in the required format.

(6) Direct web page data entry. UCC records may be delivered by online data entry using the filing office's web site on the internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the online entry system.

(7) Means of communication. Regardless of the method of delivery, information in UCC records communicated to the filing office must be machine readable and only in the form of characters included in the American National Standards Institute (ANSI) character set 0-255. Handwriting is not an acceptable means of completing any UCC form.

(8) Transmitting utility. The only means to indicate to the filing office that an initial financing statement is being

filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of lapse date, is to check the appropriate box on a UCC1 (~~Attachment filed with the initial financing statement~~) or by transmitting the information in the proper field in an electronic filing of the initial financing statement.

AMENDATORY SECTION (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

WAC 308-391-202 Grounds for refusal. In determining under RCW 62A.9A-516 whether or not there is one or more grounds to refuse a UCC record, the filing office will refuse a record for any of the following reasons:

(1) The financing statement does not provide an address that meets the minimum requirements for an address as set forth in these filing office rules.

(2) The information on the financing statement form is not machine-printed. However, attachments to the form may be handwritten.

(3) The financing statement form contains illegible information. Labels and imprints from ink stamps are considered illegible.

(4) The (~~named debtor(s) is a public official~~) record is a nonconsensual common law lien, as provided in RCW 60.70.030.

(5) The record is outside the scope of UCC as provided in RCW 62A.9A-109.

(6) The debtor does not meet the definition of a transmitting utility as provided in RCW 62A.9A-102(80).

(7) The filer is not entitled to file under RCW 62A.9A-509.

AMENDATORY SECTION (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

WAC 308-391-203 Procedure upon refusal. (1) If the filing office finds grounds to refuse a UCC record, the filing office communicates the reason(s) for the refusal and other related information to the name and address provided in box ((B)) C on the financing statement. The refusal notice will be communicated within two business days after the refused UCC record was received by the filing office, by mail or more expeditious means as the filing office shall determine. Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, are maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

(2) If the filing office finds grounds to remove a UCC record, the filing office communicates the reason(s) for the removal and other related information to the name and address provided in box C on the financing statement. We will also send notification to the debtor(s) named on the financing statement and all bulk data purchasers.

WSR 15-19-027
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 8, 2015, 2:48 p.m., effective October 9, 2015]

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

Purpose: Clarifies how the department will administer distributions from a Plan 3 defined contribution account in the event of a terminal illness or unforeseeable emergency.

Citation of Existing Rules Affected by this Order: Amending WAC 415-111-310.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 15-16-114 on August 4, 2015.

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

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

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

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

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

Date Adopted: September 8, 2015.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 05-24-050, filed 12/1/05, effective 1/1/06)

WAC 415-111-310 Defined contribution account distribution (withdrawal). (1) **How do I request a distribution (withdrawal) of funds from my defined contribution account?**

(a) You must separate from all eligible employment;

(b) The department must receive the notice of separation from your employer(s) (~~(through the retirement transmittal system)~~); and

(c) (~~You must submit the appropriate, completed form requesting a defined contribution distribution to~~) The department's designated recordkeeper (as directed on the form) must receive a completed request for a defined contribution distribution from your account. See WAC 415-111-110.

(2) **Can I receive (~~an expedited~~) a special exception distribution?**

(a) If you are terminally ill and eligible, the (~~department~~) department's designated recordkeeper will arrange for payment to you within ten workdays. To be eligible for (~~an expedited~~) a special exception payment:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) (~~You or your beneficiaries must submit documentation to the department~~) The department's designated recordkeeper must receive documentation verifying your terminal illness; and

(iv) (~~You must submit the appropriate, completed form requesting a defined contribution distribution to~~) The department's designated recordkeeper (as directed on the form) must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(b) If you have an unforeseeable emergency, the (~~department~~) department's designated recordkeeper will consider your request for (~~expedited~~) a special exception payment and arrange for (~~expedited~~) payment to you whenever possible. To be eligible for consideration:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) (~~You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110); and~~

~~(iv) You or your beneficiaries must submit documentation to the department~~) The department's designated recordkeeper must receive documentation verifying and explaining your unforeseeable emergency. The (~~department~~) recordkeeper will consider only unforeseeable emergencies (~~or serious illnesses or death of you or a close family or household member.~~

~~(e) If you are invested in a self-directed option, the Plan 3 recordkeeper will distribute your entire self-directed account balance, less any applicable tax withholding.~~

~~(d) If you are invested in the Total Asset Portfolio (TAP), the Plan 3 recordkeeper will distribute 80% of your estimated TAP account balance, less any applicable tax withholding. You will be paid the balance of your account after the final valuation has been made).~~ An unforeseeable emergency is defined as a severe financial hardship resulting from:

(A) An accident or serious illness of you or an immediate family member;

(B) The need to pay for medical expenses for you or a dependent;

(C) Imminent foreclosure or eviction from your primary residence;

(D) The need to pay for funeral expenses of a spouse or immediate family member; or

(E) Loss of property due to casualty.

(iv) The department's designated recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(c) Depending on which program you are invested in, self-directed or WSIB Total Allocation Portfolio (TAP), the recordkeeper will distribute your special exception payment as specified in the table below, less any applicable tax withholding.

	<u>Terminal Illness</u>	<u>Unforeseeable Emergency</u>
Self-Directed	<u>Up to 100% of the balance in the account within 10 days after approvals are completed.</u>	<u>Up to 100% of the balance in the account within 10 days after approvals are completed.</u>
WSIB Total Allocation Portfolio (TAP)	<u>Up to 100% of the balance in the account based on the most recent valuation within 10 days after approvals are completed.</u>	<u>Up to 80% of the balance in the account distributed as a lump sum payment through the normal month-end distribution process. If 100% liquidation is requested, the remaining balance in the account will be disbursed after the final valuation has been made.</u>

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the self-directed program may be made monthly, quarterly, semiannually or annually. Both programs have a minimum payment requirement of one hundred dollars per month.

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of

one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase. In either program,** you may request to have your funds used to purchase an annuity that pays a benefit for your lifetime or the lifetimes of you and your joint annuitant. See WAC 415-111-320 for information about purchasing an annuity and descriptions of the various annuity contracts.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses will be used to adjust the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

EXAMPLE (WSIB - Partial rollover with payments until account exhausted):

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

EXAMPLE (Self - Partial rollover with payments for fixed period):

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
Lump Sum Cash Distribution or Direct Rollover	Lump Sum Cash Distribution or Direct Rollover
- Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).	- Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).
Scheduled Payments	Scheduled Payments
- Equal payments - Monthly, quarterly, semi-annual or annual - Specified period of time, or - Until the account is exhausted	- Equal payments - Monthly payments only - Specified period of time, or - Until the account is exhausted

Summary of Distribution Options	
SELF	WSIB
- Payments can be combined life expectancy of you and a beneficiary.	- Payments can be combined life expectancy of you and a beneficiary.
Annuity Purchase	Annuity Purchase
- Purchase an annuity from an insurance company	- Purchase an annuity, administered by the state of Washington
- Set up to pay benefits for	- Set up to pay benefits for
- Your lifetime, or	- Your lifetime, or
- Lifetimes of you and your joint annuitant.	- Lifetimes of you and your joint annuitant.
In addition to the above, you may set up:	In addition to the above, you may set up:
Personalized Payment Plan	Personalized Payment Plan
- Customized for your needs	- Customized for your needs
- Available for options above.	- Available for options above.

(6) **Minimum required distribution.** Beginning on April 1 of the calendar year following the year in which you turn age 70 1/2, you are required to withdraw a minimum amount from your defined contributions annually. If you are still working at age 70 1/2, distribution is required to begin immediately upon retirement.

(7) See RCW 41.34.070 for additional information.

WSR 15-19-032
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UE-131723, General Order R-581—Filed September 9, 2015,
 11:06 a.m., effective October 10, 2015]

In the matter of amending, adopting, and repealing rules in chapter 480-109 WAC, relating to the Energy Independence Act.

I. INTRODUCTION

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 15-07-044, filed with the code reviser on March 12, 2015. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and 19.285.080.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order adopts WAC 480-109-300 regarding the annual reporting of energy and emissions intensity metrics.

II. PROCEDURAL HISTORY

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) with the code reviser on October 2, 2013, at WSR 13-20-127.

8 The statement advised interested persons that the commission was considering entering a rule making to consider whether the commission should modify rules in chapter 480-109 WAC to implement the statutory changes and provisions of chapter 19.285 RCW. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3). Pursuant to the notice, the commission convened a workshop for interested stakeholders on November 12, 2013, and solicited written comments by December 2, 2013. On April 9, 2014, the commission issued a notice announcing that it published informal draft revisions to the rules and soliciting written comments from stakeholders by May 9, 2014. The commission held a second workshop on May 15, 2014, where it received comments from stakeholders regarding the informal draft revisions to the rules.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) with the code reviser on September 3, 2014, at WSR 14-18-084. The notice provided interested persons the opportunity to submit written comments to the commission by October 6, 2014. The commission scheduled this matter for oral comment and adoption on Wednesday, November 5, 2014, at 1:30 p.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA.

10 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on November 5, 2014, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D. Goltz.¹ The commission heard oral comments from Clint Kalich, representing Avista Corporation (Avista); Etta Lockey and Mary Wiencke, representing Pacific Power & Light Company (Pacific Power); Eric Englert, representing Puget Sound Energy; Mary Kimball, representing public

counsel section of the Washington office of attorney general (public counsel); and Dina Dubson Kelley and Megan Decker, representing Renewable Northwest; and Joshua Weber, representing the Industrial Customers of Northwest Utilities.

¹ Since the November 5, 2014, adoption hearing, Commissioner Goltz retired, and the governor appointed Ann Rendahl as commissioner. Commissioner Rendahl joins in this order, having reviewed the proposed rules, the comments submitted in response to the proposed rules, and attended the adoption hearing while holding a staff position with the commission.

11 ADOPTION AND NOTICE OF PROPOSED RULE MAKING: On March 12, 2015, the commission entered General Order R-578, filed at WSR 15-07-043, adopting revised rules addressing the Energy Independence Act's energy efficiency resource standard and renewable portfolio standard. In General Order R-578, the commission deferred its consideration of a reporting requirement for energy and emissions intensity metrics (proposed WAC 480-109-300) pending more discussion regarding an effective reporting compliance methodology.² On the same day, the commission filed a CR-102 at WSR 15-07-044 to continue its proposed rule making regarding WAC 480-109-300.

² General Order R-578 ¶ 138 (March 12, 2015).

III. DISCUSSION

12 Proposed WAC 480-109-300 described reporting requirements for energy and emissions intensity metrics.³ Under this proposed section of the rule, utilities must report annual values for each metric for the preceding ten calendar years. Metrics must be based on the annual energy or emissions from all generating resources providing service to customers in Washington, regardless of the location of the generating resources. For unknown generation, or "spot market" purchases, the utility shall report emission metrics using the average electric power carbon dioxide (CO₂) emissions rate described as the "net system mix" in the Washington state electric utility fuel mix disclosure reports compiled by the Washington department of commerce (commerce) pursuant to RCW 19.29A.080. The utilities' reports to the commission must include narrative text and graphics describing trends and analysis of the likely causes of changes, or lack thereof, in the metrics.

³ The report shall include the following metrics: (a) Average megawatt-hours per residential customer, (b) average megawatt-hours per commercial customer, (c) megawatt-hours per capita, (d) million short tons of CO₂ emissions, and (e) comparison of annual million short tons of CO₂ emissions to 1990 emissions.

13 We provided a detailed discussion of stakeholder comments regarding this section in General Order R-578.⁴ In written and oral comments, Renewable Northwest and the Northwest Energy Coalition supported the inclusion of this section, while Puget Sound Energy and Pacific Power recommended deleting this section in its entirety. Avista commented that the reporting requirements contemplated in this section warrant further discussion. We rejected the utilities' requests to delete this section in its entirety,⁵ and explained that our decision to move forward with these reporting requirements was based on our general and specific authority:

⁴ General Order R-578, ¶¶ 129-138.

⁵ *Id.*, ¶ 131.

First, the commission has a responsibility to "ensure the proper implementation and enforcement of [the EIA] as it applies to investor-owned utilities."⁶ In this role, the commission has a duty to ensure that the EIA is implemented in a manner consistent with the policy goals of the statute. The EIA includes a stated policy goal to "increas[e] energy conservation."⁷ While the existing reporting requirements enable the commission to track biennial compliance, the statute contains no further guidance on how or how often the commission should track utilities' long-term progress toward meeting the state's conservation goals. We believe that developing energy intensity metrics is reasonable, and consistent with the EIA's goal to increase energy conservation in the state.

⁶ RCW 19.285.080(1).

⁷ RCW 19.285.020.

The EIA further states a policy to "protect clean air and water." Reducing greenhouse gas emissions clearly fits within this broad policy goal.⁸ In its January 2014 report to the legislature, the climate legislative and executive workgroup attributed more reductions in greenhouse gas emissions to the EIA over the next twenty years than any other state policy.⁹ While neither the drafters of Initiative 937 nor the legislature has specified how to measure the EIA's impact on the carbon intensity of generation used to serve Washington customers, establishing metrics to assess the EIA's effectiveness in reducing greenhouse gas emissions is appropriate.

⁸ *Id.*

⁹ The report projects a reduction of approximately 10.9 million metric tons of carbon dioxide equivalents of greenhouse gas emissions attributable to the Energy Independence Act in 2035. *A Report to the Legislature on the Work of the Climate Legislative and Executive Workgroup* at 10 (Table 1) (January 2014), available online at <http://www.governor.wa.gov/sites/default/files/documents/CLEWfinalCombinedReport20140130.pdf>.

In addition to its authority under the EIA, the commission also has authority under RCW 80.04.080 to require companies subject to its jurisdiction to file periodic or special reports. Such reports include information based on metrics to assess the EIA's impact on the carbon intensity of generation used to serve Washington customers.¹⁰

¹⁰ General Order R-578, ¶¶ 132-134.

14 We also acknowledged the utilities' concerns regarding the burden of additional reporting requirements.¹¹ In conclusion, we found that collecting and reporting on energy and emissions intensity metrics will be instructive in guiding state energy policy. It may assist in the state's efforts in meeting the statutory obligation to reduce greenhouse gas emissions, and prove useful in the event state or federal regulations of carbon dioxide emissions are adopted in the future. However, given that questions remain concerning the appropriate methodology for collecting the data, we find it premature to adopt the proposed rule in this order. We encourage staff to work with stakeholders to clarify the appropriate methodology and options for calculating these metrics. While we do not believe a full workshop is necessary to develop these methodologies, we do request further comments and discussion. Today we file a proposed rule-making continuance regarding these met-

rics. Once stakeholders and staff discuss the methodology further, we will consider adopting a rule requiring reporting of energy and emissions intensity metrics.¹²

¹¹ *Id.*, ¶¶ 135-137.

¹² General Order R-578, ¶ 138. RCW 70.235.020 establishes policy goals for GHG emissions reductions relative to emission levels in 1990. On August 3, 2015, the United States Environmental Protection Agency adopted final rules regulating carbon emissions from electric generating facilities.

15 The commission directed its staff to "engage in further discussion with stakeholders to develop an appropriate methodology for the per capita measurement, as well as guidelines to allocate emissions for multistate utilities."¹³ In response, the commission's staff convened and led a series of meetings with stakeholders. Participants included representatives of all three electric utilities, commerce, public counsel, the Northwest Energy Coalition, and Renewable Northwest. The stakeholders worked collaboratively and agreed upon guidelines and methodologies for the calculation of energy and emissions intensity metrics as proposed in WAC 480-109-300. The stakeholders filed a final report in this docket memorializing their agreement.¹⁴

¹³ *Id.*, ¶ 131.

¹⁴ Energy and Emissions Intensity Metrics Workgroup Final Summary Report (filed August 7, 2015).

16 In this order, we adopt proposed WAC 480-109-300 with minor technical changes and provide guidance regarding the reporting of energy and emissions intensity metrics.

17 SERVICE AREA POPULATION: WAC 480-109-300 (2)(c) requires a utility to annually report the number of megawatt-hours used per capita. The utilities expressed concern about the use of nonutility data to calculate their service area population.¹⁵ We understand that stakeholders have now examined various methodologies for deriving service area population using two different sources of publicly available population data, the Washington office of financial management's *Population Trends* and the United States Census Bureau's *American Communities Survey*. The stakeholders' collaborative review process resulted in general agreement regarding a methodology that would derive a utility's service area population. Given the current availability of census data, the stakeholders agreed that the best method to apply across all three Washington electric utilities would be to multiply the average household size by the number of a utility's residential customers in each county in its service area.¹⁶ Average household size should be determined using a five-year average of county-level data, published in the United States Census Bureau's *American Communities Survey*. To produce the reports required by WAC 480-109-300 (2)(c), the utilities should use the methodology agreed upon by stakeholders and described in the final report and this order.

¹⁵ General Order R-578, ¶¶ 136-137.

¹⁶ Utilities should consider making a separate adjustment for master-metered residential buildings, if appropriate.

18 CO2 EMISSIONS: WAC 480-109-300 (2)(d) and (e) require a utility to annually report the number of short tons of CO₂ emissions from electric generation, and compare that year's CO₂ emissions amount to the utility's CO₂ emissions in

calendar year 1990. The utilities expressed concern about the administrative burden of calculating 1990 emissions.

19 Commerce calculates, but does not publish, electric CO₂ emissions for each utility when preparing the *Washington State Electric Utility Fuel Mix Disclosure Report*.¹⁷ The workgroup agreed to use commerce's methodology to calculate annual CO₂ emissions for each utility. Commerce, commission staff, and representatives from each utility collected sufficient information to estimate 1990 CO₂ emissions for each utility using that same methodology. This group first reconstructed each utility's 1990 electric generation, sales, and purchases. Then, the group used commerce's standard emission rates from the fuel mix report methodology to determine a CO₂ emission rate for each resource. Next, the amount of energy produced by each resource for Washington customers in 1990 was multiplied by the resource's CO₂ emission rate. The sum of all the resource's emissions is the utility's total 1990 CO₂ emissions. Finally, if necessary, the emissions for each utility were allocated among states using the utility's interjurisdictional cost allocation methodology. The results of this work applied to 1990 electric generation are shown in Table 1.

¹⁷ Commerce publishes the *Electric Utility Fuel Mix Disclosure Report* pursuant to RCW 19.29A.080. This annual report identifies the types of resources in each electric utility's fuel mix. Only statewide emissions data is shown in these reports.

Table 1: Washington-allocated emissions in 1990

Utility	Million short tons of CO ₂
Avista	1,131,957
Pacific Power	2,399,078
Puget Sound Energy	6,946,064

All stakeholders agreed that the method used to reach these emissions amounts is appropriate and to use this same method when providing the calculations required by WAC 480-109-300 (2)(d) and (e) in future reports. Each utility agreed to use the Washington-allocated emissions values for 1990 as listed in Table 1 in their reports. The utility reports required by WAC 480-109-300 (2)(d) should use the methodology agreed upon by stakeholders and described herein. The utility reports required by WAC 480-109-300 (2)(e) should use the methodology agreed upon by stakeholders as well as the 1990 Washington-allocated emissions in 1990 listed in Table 1.

20 TRANSPARENCY AND CONSISTENCY: In order to promote transparency and consistency in this reporting, each utility must document in detail the sources of data and methods used to make each calculation required under WAC 480-109-300. We expect utilities to use the same source of data and methodology from year to year.

21 We recognize that other methods may become available in the future that would more effectively ascertain the average household size of utility customers or the short tons of CO₂ emissions allocated to a utility's electric generation. We do not foreclose the use of such methods here. However, when a utility considers any change to the stakeholders' agreed upon methodologies the commission should review

the method or data a utility proposes to use before a utility uses it to complete the reports required by this rule. If a utility considers such a change in applicable data or methodology, the utility should notify the commission of the proposed change, explain the reasons for the change, and describe the benefits expected from making the change. That notification should include, for purposes of comparison, the expected results derived from using the methodology we adopt here and the proposed new methodology.

22 CHANGES FROM THE PROPOSED RULE: We make several technical changes to the proposed rule. We spell out the term "megawatt-hours" instead of using the abbreviation "MWh." Additionally, we specify that reports must use short tons of CO₂ emissions rather than just referring to tons of CO₂.

IV. COMMISSION ACTION

23 After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rule as proposed in the CR-102 at WSR 15-07-044 with the changes described above.

24 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-109-300 should be adopted to read as set forth in Attachment A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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 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.

V. ORDER

THE COMMISSION ORDERS:

25 The commission adopts WAC 480-109-300 to read as set forth in Attachment A, as a rule of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

26 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, September 9, 2015.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Ann E. Rendahl, Commissioner

Reviser's note: The brackets and enclosed material in the text of the above material occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Attachment A (WAC 480-109-300 - RULE)

NEW SECTION

WAC 480-109-300 Energy and emissions intensity metrics. (1) A utility must report metrics of energy and emissions intensity to the commission on or before June 1st of each year. The report must include annual values for each metric for the preceding ten calendar years. Each value reported must be based on the annual energy or emissions from all generating resources providing service to customers of that utility in Washington state, regardless of the location of the generating resources. When the metrics are calculated from generators that serve out-of-state and in-state customers, the annual energy and emissions outputs must be prorated to represent the proportion of the resource used by Washington customers.

(2) The energy and emissions intensity report shall include the following metrics:

- (a) Average megawatt-hours per residential customer;
- (b) Average megawatt-hours per commercial customer;
- (c) Megawatt-hours per capita;
- (d) Million short tons of CO₂ emissions; and
- (e) Comparison of annual million short tons of CO₂ emissions to 1990 emissions.

(3) **Unknown generation sources.** For resources where the utility purchases energy from unknown generation sources, often called "spot market" purchases, from which the emission rates are unknown, the utility shall report emission metrics using the average electric power CO₂ emissions rate described as the net system mix (spot market) in the Washington state electric utility fuel mix disclosure reports compiled by the department pursuant to RCW 19.29A.080. For the resources described in this subsection, a utility must show in the report required in subsection (1) of this section the following:

- (a) Short tons of CO₂ from unknown generation sources;
- (b) Megawatt-hours delivered to its retail customers from unknown generation sources; and
- (c) Percentage of total load represented by unknown generation sources.

(4) The energy and emissions intensity report must include narrative text and graphics describing trends and an analysis of the likely causes of changes, or lack of changes, in the metrics.

WSR 15-19-042
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 10, 2015, 3:35 p.m., effective October 11, 2015]

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

Purpose: WAC 139-05-300, this rule change is being proposed to establish a requirement that all reserve peace officers receive a minimum of twenty-four hours of in-service training annually.

Reserve peace officers have the same authority as fully commissioned peace officers when called to duty; therefore, these changes will require reserve officers to meet the same in-service requirements as fully commissioned peace officers.

Citation of Existing Rules Affected by this Order: Amending 2.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 15-14-023 on June 22, 2015

Changes Other than Editing from Proposed to Adopted Version:

- Added reserve officers.
- Require twenty-four hours of in-service training per year.

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

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

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

Date Adopted: September 9, 2015.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-098, filed 8/4/09, effective 9/4/09)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2006, for incumbent officers.

(b) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(2) Effective January 1, 2016, every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of twenty-four hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve peace officer/tribal peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic reserve law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

~~((2))~~ (4) The sheriff or chief of an agency may approve an extension of three months for ((certified)) peace officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

WSR 15-19-047
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed September 10, 2015, 4:28 p.m., effective October 11, 2015]

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

Purpose: The adoption of these Rule changes will (1) require a residential burn permit in Thurston County; and (2) allow the agency to revoke a previously issued burn permit for a fire that has caused a nuisance.

Citation of Existing Rules Affected by this Order: Amending ORCAA Regulations Rule 3.4 and Rule 6.2.8.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-10-020 on April 24, 2015.

Changes Other than Editing from Proposed to Adopted Version: Rule 3.4(c) was deleted in the adopted version. Rule 3.4(c) would have established a structure for a potential Thurston County Residential Burn Permit fee.

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

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

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

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

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

Date Adopted: August 12, 2015.

Francea L. McNair
Executive Director

AMENDED SECTION

Rule 3.4 Outdoor Burning Permit Fees

The applicable fee(s) for the following Permits shall be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

(a) The fee for an Agricultural Burn Permit is specified in the Outdoor Burning Fee Schedule. ~~((The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.))~~

(b) The fee for a Land Clearing Burn Permit is specified in the Outdoor Burning Fee Schedule. The fees shall be sufficient to cover the direct and indirect cost of the Land Clearing Burn Permit program and shall be determined through a workload-driven process. ~~((The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.))~~

AMENDED SECTION

Rule 6.2.8 Permit Program ~~((WAC 173-425-060))~~

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, ~~((or))~~ failed to contain pertinent information((-) or the permitted activity has caused a nuisance.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70.94.430 and RCW 70.94.431.

(c) Types of burning that require a written permit.

(1) Agricultural burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all of the following requirements are met:

(i) Fire training shall not occur during a burn ban.

(ii) The fire must be for training purposes.

(iii) The agency conducting the training fire shall obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

(3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

(4) Land Clearing Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(5) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(6) Weed abatement fires.

(7) Residential fires in Thurston County.

The permit application for the above permits shall be accompanied by the applicable fee, pursuant to Rule 3.4.

(d) Where residential burning is allowed and no written burn permits are issued, burning shall abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile shall be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.

WSR 15-19-058

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 11, 2015, 2:47 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: WAC 246-490-080, 246-490-081 and 246-490-082, adding new sections for delayed registration and certificate of birth. The rules strengthen requirements for registration of delayed birth certificate by creating a standard process for registration and clear requirements for documentary evidence. The rules also align the requirement for establishing a second parent with the Uniform Parentage Act (chapter 26.26 RCW).

Statutory Authority for Adoption: RCW 43.70.150, 70.58.082.

Adopted under notice filed as WSR 15-09-141 on April 22, 2015.

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 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: August 19, 2015.

Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

Delayed Registration of Births

NEW SECTION

WAC 246-490-080 Delayed birth certificate—Requesting registration. (1) An interested person may request registration of a live birth that occurred in Washington state when no birth record is found on file with the department.

(2) Interested person means:

(a) A person registering his or her own birth if age eighteen or older; or

(b) The parent(s) or guardian(s) if the person who is the subject of the delayed birth certificate is under age eighteen.

(3) An interested person shall obtain a letter from the department stating no record was found on file before requesting a delayed birth certificate.

(4) By requesting a delayed birth certificate, the requestor is attesting to the fact that no birth record is on file with another jurisdiction and the person was born in Washington state.

(5) A request for registration of a delayed birth certificate must include:

(a) A completed delayed birth certificate form signed by the requestor;

(b) Documentary evidence required by WAC 246-490-081;

(c) A copy of the no record found letter required in subsection (3) of this section;

(d) Fee(s) as required by RCW 70.58.107 if requesting certified copies of the delayed birth certificate.

(6) A delayed registration of birth is not required for a child under the age of four if the attending physician or midwife is available and registers the birth with the department.

NEW SECTION

WAC 246-490-081 Delayed birth certificate—Documentary evidence required. (1) If the person is under age twelve, the facts concerning date of birth, place and parentage of birth must be established by at least two pieces of documentary evidence, only one of which may be a sworn statement; or

(2) If the person is age twelve and over, the facts concerning date of birth and place must be established by at least three pieces of documentary evidence, only one of which may be a sworn statement. One piece of documentary evidence must establish parentage.

(3) Documentary evidence for establishing parentage is required for both parents if more than one parent is to be listed on the request. If the parents were not married at the time of birth or during the pregnancy and the person is under age eighteen, a paternity acknowledgment or court order is required to include the second parent on the delayed birth certificate.

(4) The documentary evidence must be from independent sources and must have been established prior to the person's fourth birthday or be at least five years old, or based on records established at least five years prior to the date of the request.

(5) Documentary evidence may include, but is not limited to, the following:

(a) Military records;

(b) Numident report, which is a Social Security Administration report of information from the original application for Social Security card;

(c) Hospital or medical records;

(d) Federal census records;

(e) School enrollment records;

(f) Newspaper notice of birth with the date published and name of paper on the same page;

(g) Voter registration application that includes name, date, and place of birth;

(h) A sworn statement as defined in subsection (6) of this section;

(i) A combination of documents deemed adequate by the state registrar for establishing the facts concerning the birth.

(6) A sworn statement must be made by a person who has knowledge of the facts of birth. The statement must be on a form provided by the state registrar, notarized by an authorized notary public, and include:

(a) The full name of the person whose birth is being registered;

(b) The names of his or her parent(s);

(c) Marital status of parent(s) during the pregnancy or at the time of birth;

(d) The date and place of birth of the person whose birth is being registered;

(e) A detailed statement of how the person knows the facts to be true.

NEW SECTION

WAC 246-490-082 Delayed birth certificate—Verification and registration. (1) The state registrar may verify

the authenticity and accuracy of documentary evidence provided by the requestor.

(2) If the request for registration is incomplete, the department will notify the requestor. An incomplete request for registration of a delayed birth certificate will be returned to the requestor if not completed within one year.

(3) The department will not register a delayed birth certificate for a deceased person.

(4) Any person born in this state who is unable to meet the requirements for a delayed registration of birth may petition the superior court of the county of residence or county of birth for an order establishing a record of the date and place of his or her birth, and his or her parentage as allowed by RCW 70.58.145.

WSR 15-19-076
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 14, 2015, 3:50 p.m., effective October 15, 2015]

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

Purpose: WAC 139-05-810, this rule change is being proposed to require agencies to provide the Washington state criminal justice training commission (WSCJTC) with notification of the hire and separation of each reserve officer. In addition, the proposed changes will identify who may or may not attend training.

The addition of these requirements will assist the WSCJTC in ensuring all reserve officers are receiving the required basic training.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 15-14-021 on June 22, 2015.

Changes Other than Editing from Proposed to Adopted Version:

- Added language explaining that officers whose certification is not in good standing are not eligible to be a reserve.
- Added requirement of notice of hire.
- Added requirement of notice of separations.
- Identified who may participate in the reserve process.
- Identified who will receive a diploma vs. letter of attendance.
- Language explaining reserves are not eligible for peace officer certification.

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 5 [0], Amended 6 [1], Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5 [0], Amended 6 [1], Repealed 0.

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

Date Adopted: September 9, 2015.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-810 Basic training requirement for reserve officers. (1) ~~((For the purposes herein:~~

~~(a)) A peace officer or tribal police officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate, regardless of the officer's prior years of law enforcement service.~~

~~(2) Beginning January 1, 2016, as a condition of continuing employment, volunteering, or otherwise representing a law enforcement agency, all reserve peace officers must be reported to the commission.~~

~~(3) "Reserve peace officer" ((includes any law enforcement)) for the purposes of this chapter, means any officer who does not serve as a law enforcement officer of this state on a full-time basis, but who, when called by such agency into active service, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state(~~; and~~~~

~~(b) "Field assignment" includes any period of active service wherein the assigned officer is expected to take routine and/or special enforcement actions, independently or otherwise, in the same manner and capacity as a full-time officer with such assignment)).~~

~~((2)) (4) Eligibility for participation in the basic reserve academy process is limited to:~~

~~(a) Specially commissioned reserve peace officers of the state of Washington;~~

~~(b) Commissioned Washington state tribal peace officers;~~

~~(c) Persons employed by a limited authority Washington law enforcement agency as defined under RCW 10.93.020;~~

~~(d) Persons employed as security by public colleges and universities as defined under RCW 28B.10.016; or~~

~~(e) Persons employed as security in the K-12 Washington state public school system as defined under RCW 28A.150.010.~~

~~(5) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state will obtain a basic reserve certificate as a precondition of the exercise of authority pursuant to such act(~~; provided that, any individual possessing a basic reserve certificate issued by the commission prior to January 1, 1989, will be deemed to have met this requirement.~~~~

(3) Upon approval of an applicant's eligibility to participate in the reserve process, the applicant's employing agency must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process.

(4) Each applicant that has been offered a conditional offer of employment as a reserve officer must take and successfully pass a psychological and a polygraph test or similar assessment procedure, administered pursuant to RCW 43.101.105 (2)(a)(i) and (ii)).

(6) Upon appointment of a reserve peace officer, the appointing law enforcement agency shall immediately notify the commission on a personnel action report form provided by the commission.

(7) Upon termination of a reserve peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission.

(8) As a precondition of participating in the reserve basic law enforcement academy, it is the responsibility of each applying agency to conduct a complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual will be granted reserve academy admission or allowed continued participation if the individual has been convicted of a felony offense, or any misdemeanor or gross misdemeanor crime of dishonesty within the meaning of Evidence Rule 609(a), or domestic violence.

Each application for academy attendance must be accompanied by a written attestation by the applying agency that (a) the criminal records check has been completed, and (b) There are no disqualifying convictions. Upon approval of an applicant's eligibility to participate in the reserve process, the applicant's employing agency must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process. The decision to request an officer's participation in the basic reserve law enforcement academy shall be approved by the head of the officer's employing agency.

~~((5))~~ (9) A basic reserve certificate will be issued by the commission to any ~~((individual))~~ specially commissioned reserve peace officer who successfully completes ~~((#))~~ the requirements set forth in RCW 43.101.080(19) and the basic reserve law enforcement academy course of instruction ~~((for reserve officers))~~ as prescribed and required by the commission.

~~((6))~~ Requirements of subsection (5) of this section may be waived in whole or in part. A request for waiver must be made under WAC 139-03-030. In reviewing such request, the commission will consider the following:

(a) An evaluation of an applicant's experience and training accomplishments;

(b) The fact that an individual is a regular full-time commissioned law enforcement officer who leaves full-time employment; or

(c) The fact that an officer has been certified in accordance with the requirements of subsection (2) of this section, and thereafter has engaged in regular and commissioned law

enforcement employment without break or interruption in excess of twelve months duration.)) (10) A certificate of attendance may be issued to those who successfully complete the basic reserve law enforcement academy, but who are not appointed as a reserve peace officer by a general authority Washington law enforcement agency as defined under RCW 10.93.020(1).

(11) Reserve officers are not eligible to apply for peace officer or tribal police officer certification, furthermore, appointment as a reserve peace officer is not considered continuous employment for the purposes set forth in RCW 43.101.095 and 43.101.157.

WSR 15-19-080
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 15, 2015, 8:49 a.m., effective October 16, 2015]

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

Purpose: WAC 139-05-825, this rule change is being proposed to establish a process for certified peace officers to become reserve officers by complying with the rules established in this WAC.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 15-14-022 on June 22, 2015.

Changes Other than Editing from Proposed to Adopted Version:

- Added language explaining that officers whose certification is not in good standing are not eligible to be a reserve.
- Added requirement of notice of hire.
- Added requirement of notice of separation.
- Identified who may participate in the reserve equivalency process.
- Language explaining reserves are not eligible for peace officer certification.

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 3 [0], Amended 7 [1], Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3 [0], Amended 7 [1], Repealed 0.

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

Date Adopted: September 9, 2015.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-032, filed 9/9/09, effective 10/10/09)

WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency. (1) A peace officer or tribal peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of equivalency for the basic reserve law enforcement academy shall be issued only to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" shall include all documentation and prerequisites set forth in subsection ~~((6))~~ (8) of this section and successful completion of all knowledge and skills requirements within the basic reserve law enforcement equivalency academy. A certificate of completion of equivalent reserve law enforcement training is recognized in the same manner as the certificate of completion of the basic reserve law enforcement academy.

~~((2))~~ (3) Eligibility for participation in the basic reserve law enforcement equivalency process shall be limited to ~~(fully commissioned reserve law enforcement)~~:

(a) Reserve peace officers ~~(and)~~ who have previously attained a basic reserve certificate through completion of a basic reserve law enforcement academy or program in Washington state and who has incurred a break in service of:

(i) More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission; or

(ii) More than twenty-four months break in service requires the person to attend the basic reserve law enforcement academy.

(b) Fully commissioned general authority peace officers or tribal police officers of this state who have attained ~~(basic)~~ peace officer certification through completion of ~~((a))~~ an approved basic training program ~~((or a basic reserve law enforcement academy/program))~~ in this or another state ~~((and have incurred a break in service of more than twelve months but less than thirty-six months.))~~ who has incurred a break in service of:

(i) Less than twenty-four months must submit an application to be recognized as a reserve officer to the commission and successfully complete the requirements of RCW 43.101.080(19); or

(ii) More than twenty-four months and less than sixty months requires the applicant to successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission; or

(iii) More than sixty month break in service requires the applicant to attend the basic reserve law enforcement academy.

(c) Fully commissioned peace officers of another state who have incurred a break in service of:

Less than sixty months requires the applicant to successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(d) For this purpose, the term "basic training program" does not include any military or any federal training program not otherwise approved by the commission.

~~((3))~~ Requirements for a person to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) ~~More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.~~

(b) ~~More than twenty-four but less than thirty-six months must successfully pass the psychological and polygraph tests, complete the criminal history and background check, and successfully pass the comprehensive reserve final test proctored by the commission.~~

(c) ~~More than thirty-six months break in service requires the person to attend the basic reserve law enforcement academy.~~

(4) ~~It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner and as necessary to ensure that the participation provided by this section is affected.~~

~~((5))~~ (4) The decision to request an officer's participation within the equivalency process shall be discretionary with the head of the officer's employing agency ~~(, who shall advise the commission of the decision by appropriate notification upon the hiring of the officer. Upon receipt of such notification, the commission shall provide to such agency head all necessary forms and information required for the processing of a request for a certificate of equivalency).~~ It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner.

~~((6))~~ (5) Upon appointment of a reserve peace officer, the appointing law enforcement agency shall immediately notify the commission on a personnel action report form provided by the commission.

(6) Upon termination of a reserve peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission.

(7) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state will obtain a basic reserve certificate as a precondition of the exercise of authority pursuant to such act.

(8) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) A copy of the applicant's certificate of successful completion of an approved basic ~~((or))~~ reserve academy ~~((or))~~ or program ~~((as outlined in subsection (1) of this section.))~~ and/or a copy of the applicant's peace officer certification certificate:

(b) Proof ~~((that a search of state and national criminal history records has been conducted by the employing agency regarding applicant through appropriate submission of the applicant's fingerprints and such search indicated the absence of any conviction of applicant for a felony offense, a misdemeanor, or gross misdemeanor offense involving moral turpitude.~~

~~(c) The candidate has successfully completed a psychological examination and a polygraph.~~

~~(d) A copy of the applicant's current and valid driver's license.~~

~~(e)) the applicant has successfully completed the requirements set forth in RCW 43.101.080(19):~~

~~(c) A record ~~((of the applicant's firearms qualification.~~~~

~~(f)) showing the applicant has met the firearms training as set forth by the commission;~~

~~(d) A record ~~((that)) showing the applicant ~~((is current in)) has met the defensive tactics training as set forth by the commission; and~~~~~~

~~(e) A record showing the applicant has met the emergency vehicle operations training as set forth by the commission.~~

~~((7)) (9) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will issue a certificate of completion of equivalent basic reserve law enforcement training.~~

~~(10) Reserve officers are not eligible to apply for peace officer or tribal police officer certification, furthermore, employment as a specially commissioned peace officer/reserve officer is not considered continuous full-time employment for the purposes set forth in RCW 43.101.095 and 43.101.157.~~

WSR 15-19-081

PERMANENT RULES DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed September 15, 2015, 11:59 a.m., effective October 16, 2015]

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

Purpose: This rule making implements requirements of ESSB 5550 which exempts from workers' compensation insurance the taxi, for hire, and limousine drivers who own vehicles or lease them from others; and commercial transportation service (CTS) drivers as defined in Title 48 RCW. The legislation allows for elective coverage for these exempt employments. Reporting and classification rules are updated to reflect the law.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-35203 Special reporting instructions, 296-17A-1401 Classification 1401 (Taxi companies), 296-17A-1404 Classification 1404 (Cabulance and paratransit) and 296-17A-6301 Classification 6301 (Limousine drivers); and new WAC 296-17-35205 Special reporting for taxi, for hire, limousine drivers and entities; and commercial transportation service drivers.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 15-15-149 on July 21, 2015.

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 4, 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: September 15, 2015.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams. Athletes assigned and under contract to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance. Athletes assigned to a Washington-domiciled sports team but under contract with a parent team domiciled outside of the state are mandatorily covered by Washington industrial insurance unless the player is eligible for coverage in another state, and there is a valid coverage agreement as described below.

A player is eligible for coverage in another state only when both the player and the employer agree in writing that the employment is principally localized in that state.

Example: If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player competes in regularly scheduled games.

(a) Upon request, the department will provide forms to the owners of professional and semiprofessional sports teams for entering into agreements for both the sport player and the sport team. These agreements are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(b) When a sport team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sport player coverage agreement:

(i) A sport player coverage agreement must be signed by the team (employer) and each individual player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was

signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state where coverage is provided.
- Agree that the player's employment is principally located in that state.
- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sport player coverage agreement when requested. Employers who do not provide the department copies of a sport player coverage agreement when requested are considered not to have secured payment of compensation as required and all premiums and penalties allowed for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers' compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered not to have secured payment of compensation as required and all premium and penalties allowed for in Title 51 RCW apply.

Sport team coverage agreement:

(c) A sport team coverage agreement must be signed by the employer (team) and the qualifying out-of-state workers' compensation insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

- Be signed by both parties, dated, and show the name of the state where coverage is provided.
- Specify that the team's players are principally localized in that state.
- Specify the insurer agreeing to provide coverage for a team based in Washington.

(d) The sport team coverage agreement must be signed annually. Copies of the agreement along with a current copy of the team's out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.-095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried, part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried, part time, percentage of profits or piece basis, the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period.

Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(A) The employers' unified business identification account number (UBI).

(B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(C) The total contract award.

(D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(E) Physical location/site where the work will be performed including legal description.

(F) Number of acres covered by the contract.

(G) Dates during which the work will be performed.

(H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall, in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and submit payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day

immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - Verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employer's work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' accounts online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - Work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

- (i) The name of the contractor who has been engaged to perform the work;
- (ii) The contractor's UBI number;
- (iii) The contractor's farm labor contractor number;
- (iv) The total contract award;
- (v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;
- (vi) Location where the work is to be performed;
- (vii) A contact name and phone number of the person, firm, or corporation who let the contract;
- (viii) The total estimated wages to be paid by the contractor and any subcontractors;
- (ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;
- (x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;
- (j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Olympia, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) Logging and/or tree thinning—Mechanized operations—Industry rule. The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - Mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No

deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) I do some of the work myself. Can I deduct material I as an owner install or finish? Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owner hours} \div (\text{owner hours} + \text{worker hours}) = \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) Can I be disqualified from using the discounted rates? Yes. You can be disqualified from using the discounted rates for three years if you:

- (i) Do not file all reports, including supplemental reports, when due;
- (ii) Do not pay premiums on time;
- (iii) Underreport the amount of premium due; or
- (iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department that find errors in their reporting and paying premiums, and that voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) Safe patient handling rule. The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

- Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;
- Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;
- Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;
- Birthing centers, which come within the scope of chapter 18.46 RCW;
- Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW;
- Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers' compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(b) Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state? A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, that employer will not need to pay premiums in Washington for work in the other state during the calendar year, as long as that employer fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has

Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) What if a Washington employer knows the Washington workers' work in another state will exceed the temporary and incidental period? If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, the employer must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but that does not occur? If a Washington employer did not pay workers' compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) What records must the employer keep while employing Washington workers in another state? In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental? A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which that employer has Washington workers performing work. The supplemental report must include the following information:

- (i) The Washington employer's unified business identification number (UBI).
- (ii) The Washington employer's department account identification number.
- (iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.
- (iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.
- (v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state? Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington? Yes, but only if the Washington employer:

- (i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;
- (ii) Provides proof of out-of-state coverage;
- (iii) Filed the appropriate quarterly reports with the department when due; and
- (iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

~~(9) ((Special for hire taxi/industry rules. All for-hire vehicles must be covered for workers' compensation insurance. The owner of the vehicle is responsible for the workers' compensation insurance premiums. Those businesses that provide only cabulance or limousine services must report actual hours worked.~~

~~(a) What is the unit of exposure for taxis? Flat rate by driver – The rate is based on four hundred eighty hours per driver each quarter.~~

~~Flat rate by vehicle – The rate is based on nine hundred sixty hours per vehicle each quarter.~~

~~Actual hours – The rate is based on actual hours worked.~~

~~(b) Can I use a flat rate for reporting some vehicles and actual hours for reporting other vehicles? No, you must choose to report using only one of the three methods: Flat rate per driver, flat rate per vehicle, or actual hours worked. Owners who choose to report by driver or by actual hours worked must maintain verifiable records, such as lease agreements or payroll records. Where verifiable records are not available or not maintained, the owner must pay premiums on the flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~(c) What happens if premiums are not paid? If the for-hire/taxi vehicle owner does not pay premiums, the department will report nonpayment to the department of~~

licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

(10)) **Horse racing industry rules.** These rules apply to persons licensed by the Washington horse racing commission (WHRC) and governed by WAC 260-36-250.

(a) Who is responsible for paying industrial insurance premiums?

(i) The trainer will be responsible to pay the industrial insurance premiums owed. Premiums will be paid to the WHRC monthly, at the end of the coverage month or before the trainer leaves the track taking his/her horses when leaving before the end of the coverage month. WHRC will submit premiums to the department of labor and industries on a quarterly basis. The employee must be properly licensed by the WHRC for the duties being performed. This includes all exercise riders and pony riders who need steward approval of their license application, whether at the track or at the farm.

(ii) Licensed trainers shall be assessed:

(A) One unit of premiums in classification 6625 for each licensed groom or assistant trainer employed at any one time;

(B) One unit of premiums in classification 6626 for licensed exercise riders and pony riders charged per stall for each day the trainer has a horse housed in a stall at a licensed track during a licensed meet; and

(C) One unit of premiums in classification 6627 for licensed exercise riders and pony riders for each calendar day a licensed exercise rider or pony rider works under contract for the trainer at a location other than at a licensed track during a licensed meet.

(b) What does the trainer do when an employee leaves the job? Trainers must notify the WHRC within forty-eight hours when any employee leaves their employ. If a trainer fails to notify the WHRC timely, the trainer will be responsible for the full premium payment until notification is made.

(c) When are track employees covered under horse racing classifications?

(i) Track employees are only covered on the grounds of a Washington race track during its licensed race meet and periods of training. The licensed race meet and periods of training apply to that period of time when the WHRC has authority on the grounds, including the period before the live race meet begins, when horses are exercised in preparation for competition, and through the end of the licensed race meet.

(ii) Covered track employees who are licensed exercise riders or pony riders may work off the grounds of a Washington race track, but only after obtaining a farm employee license. The trainer must notify the WHRC when the employee will be working off the grounds, so that the additional per-day farm employee premium can be calculated and assessed to the trainer for each day the track employee works off the grounds.

(iii) Employees working on the grounds of a Washington race track prior to or after this period must be covered as farm employees (classification 6627) to be able to make a claim against the horse racing industry account, or the trainer can cover such employees under another account (classification 7302).

(d) Who can be covered under the farm employee classification (6627)?

(i) Licensed exercise riders and pony riders working at the farm must be assigned to a trainer and not the farm. Such employees cannot be assigned to the owner of the farm or training center unless the owner is licensed as a trainer.

(ii) Covered farm employees who are licensed exercise riders or pony riders may come to the Washington race track to assist the trainer during the live race meet and periods of training. As long as a farm employee is covered at the farm, and the trainer notifies the WHRC when the employee will be working at the track, the farm employee may work at the track without additional premium being owed.

(e) Are employees covered while working in another state?

(i) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if the other jurisdiction has a reciprocal agreement with the state of Washington. The trainer must pay the premiums for grooms and assistant trainers in classification 6625, and for exercise riders and pony riders at the farm in the farm classification, 6627. For a list of states with reciprocal agreements with the state of Washington, see WAC 296-17-31009.

(ii) Trainers will need to continue to report Washington employees to the WHRC prior to the start of each month so an assessment can be made.

(iii) Failure to report, or to report correctly, may result in the trainer being referred to the stewards or the executive secretary of the WHRC for action.

(iv) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(f) Must horse owners pay industrial insurance premiums in Washington? Licensed owners shall be assessed one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Partial owners shall be assessed prorated amounts of the one hundred fifty dollar fee. In no event shall a licensed owner be required to pay more than one hundred fifty dollars. This fee helps fund workers' compensation coverage for injured workers. It does not extend any coverage to owners.

NEW SECTION

WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities; and commercial transportation service drivers. (1) When does the law providing for nonmandatory coverage begin? The law takes effect July 24, 2015, and exempts the following individuals, who may elect coverage as authorized under RCW 51.32.-030:

(a) Drivers providing commercial transportation services (CTS), also sometimes known as transportation network company services (TNCs), as defined in Title 48 RCW;

(b) For-hire vehicle operators as defined under chapter 46.72 RCW who own the for-hire vehicle or lease it from others;

(c) Limousine drivers as defined under chapter 46.72A RCW who own the limousine or lease it from others; and

(d) Taxicab operators, as defined under chapter 81.72 RCW, who own the taxicab or lease it from others.

(2) What are the special rules for these drivers and entities? If you are exempt from mandatory coverage as described in subsection (1) of this section:

(a) You may elect to buy workers' compensation insurance to cover yourself as provided by RCW 51.32.030 and as defined in WAC 296-17-31007 Owner coverage.

(b) For the reporting period July 1, 2015, through July 23, 2015, if we do not receive an application for optional coverage from you by July 23, 2015, you must report your mandatory coverage on a prorated basis using one of these methods:

(i) For flat rate by driver, one hundred twenty hours per driver;

(ii) For flat rate by vehicle, two hundred forty hours per vehicle;

(iii) Actual hours worked.

(3) What are the quarterly reporting options for taxi drivers and entities, for-hire drivers and entities, and CTS drivers? When reporting for an entire quarter:

(a) If you are an exempt driver who has elected coverage, you may report your exposure under either subclassification 1401-01 (480 hours per quarter per driver) or 1401-03 (actual hours worked), but you must report all your exposure for the quarter under only one subclassification.

(b) If you are or an entity reporting mandatorily covered workers, you may choose to report all driver exposure under subclassifications 1401-01 (480 hours per quarter per driver), 1401-02 (960 hours per quarter per vehicle), or 1401-03 (actual hours worked), but you must report all driver exposure for a quarter under only one subclassification.

(c) Reporting method options:

(i) Flat rate by driver - The rate is based on four hundred eighty hours per driver each quarter (classification 1401-01);

(ii) Flat rate by vehicle - The rate is based on nine hundred sixty hours per vehicle each quarter (classification 1401-02);

(iii) Actual hours - The rate is based on actual hours worked (classification 1401-03).

Special note: If you report by driver or by actual hours worked, you must maintain verifiable records, such as lease agreements or payroll records.

(4) What are the quarterly reporting options for limousine drivers and entities, and cabulance drivers and entities? For exempt drivers who elect coverage and for entities paying for coverage for mandatorily covered workers, when reporting an entire quarter, hours must be reported in one of the following methods:

(a) Actual hours worked; or

(b) Four hundred eighty hours per quarter.

Special note: If you report actual hours worked, you must keep detailed records.

AMENDATORY SECTION (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

WAC 296-17A-1401 Classification 1401.

~~(1401-01 Taxicab companies — Flat rate by driver~~

~~Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.~~

~~This classification excludes: Owners who choose to report using a flat rate per vehicle who report in classification 1401-02; owners who choose to report actual hours who report in classification 1401-03; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.~~

~~**Special note:** Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.~~

~~**Special note:** Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.~~

~~1401-02 Taxicab companies — Flat rate by vehicle~~

~~Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~This classification excludes: Owners who choose to report using a flat rate per driver who report in classification 1401-01; owners who choose to report actual hours worked who report in classification 1401-03; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers~~

with no other job duties who may be reported separately in classification 4904.

Special note: Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

1401-03 Taxicab companies—Actual hours

Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting taxis on an actual hours basis.

This classification excludes: Owners who choose to report using a flat rate per driver who report in classification 1401-01; owners who choose to report a flat rate per vehicle who report in classification 1401-02; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.

Special note: Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

1401-04 Pedicab and horse drawn carriage companies

Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, and assisting passengers in and out of

the vehicle. This classification also includes the care and feeding of animals while vehicle is available for transporting passengers.

Businesses using this classification report the actual hours of operation per for-hire vehicle and must maintain records that are verifiable.)) Applies to providing passenger transportation to others, including:

- Establishments that employ taxi or for-hire drivers as defined under:

- Either chapter 81.72 or 46.72 RCW; and

- WAC 296-17-35205, which describes special reporting.

- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who:

- Own their own vehicles or who lease vehicles from others; and

- Elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

- Commercial transportation services (also known as transportation network company) drivers as defined in Title 48 who are exempt from coverage, but who have elected optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

- Pedicab and horse drawn carriage companies.

Special note: If all conditions are met for the general reporting rules about standard exception employees, establishments that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be reported separately in classification 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are reported separately in classification 3411.

Work contemplated by this classification includes, but is not limited to:

- Operation of the vehicle;

- Loading/unloading passengers' luggage;

- Assisting passengers in and out of the vehicle;

- Pickup and delivery of small packages; and

- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

This classification excludes:

- Maintenance/repair of the vehicle which is reported in classification 3411;

- Establishments that operate ambulance services which is reported separately in classification 1405;

- Establishments that operate cabulance and paratransit services exclusively which is reported separately in classification 1404; and

- Dispatchers with no other job duties who may be reported separately in classification 4904.

For administrative purposes, classification 1401 is divided into the following subclassification(s):

1401-01 Passenger transportation companies - Flat rate by driver

This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.

1401-02 Passenger transportation companies - Flat rate by vehicle

This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.

1401-03 Passenger transportation companies - Actual hours

This classification is for reporting employees on an actual hours worked basis.

1401-04 Pedicab and horse-drawn carriage companies

Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work contemplated by this classification includes, but is not limited to, care and feeding of animals while the vehicle is available for transporting passengers.

AMENDATORY SECTION (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

WAC 296-17A-1404 Classification 1404.**1404-06 Vessels, ferries, tugs, and steamboats, N.O.C.**

Applies to employees not covered under federal jurisdiction, or another classification (N.O.C.), who provide services for seaworthy vessels such as ferries, tugs, or steamboats at the docking site or on adjacent land. Vessels may operate seasonal or year-round. Employments include, but are not limited to, dock workers, maintenance workers, traffic control personnel, and night security personnel.

Special note: Care should be exercised prior to assignment of this classification as the workers could be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act. A detailed description of these acts can be found in classifications 0104 or 0202.

1404-07 Train rides

Applies to establishments engaged in the operation of passenger excursion train rides for scenic or amusement purposes on an intrastate basis only. Excursion train rides are typically operated from a mountain, lake or similar site. The trains may operate on a seasonal basis in direct relation to the volume of tourists, weather conditions, or dates of local celebration. Employments in this classification include, but are not limited to, drivers/engineers, guides, lecturers, hostesses, and maintenance personnel. Ticket sellers may be reported separately in classification 4904 provided that they do not handle baggage and that the conditions of the standard exception general reporting rules have been met. On-board food service personnel may be reported separately in classification 3905 as long as their duties are limited to food service and they do not facilitate the train ride or train ride operation in any way.

1404-11 Escort and pilot cars

Applies to establishments that provide escort or pilot car services for others. The duties include driving ahead of, or behind, various types of vehicles.

This classification excludes employees of an employer assigned to drive escort or pilot cars in connection with the delivery of equipment, buildings, goods, or similar items which the employer sells or contracts to deliver. Such

employment is ~~((to be))~~ reported separately in the classification applicable to sales or delivery of such items. For example, an escort driver employed by a common carrier transporting a modular home to a customer's site is ~~((to be))~~ reported separately in classification 1102.

1404-12 Cabulance and paratransit

Applies exclusively to establishments that provide on-demand, nonemergency transportation services to passengers with special needs. Vehicles used are usually vans that are equipped for accessibility to accommodate passengers with mobility limitations including passengers in wheelchairs or gurneys. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, assisting passengers in and out of the vehicle, and maintenance/repair of the vehicle when performed by employees of an employer subject to this classification.

This classification excludes:

- Cabulance services offered in conjunction with a taxi service ~~((which are to be reported separately in));~~ see classification 1401(;;);

- Cabulance services offered in conjunction with an ambulance service which are ~~((to be))~~ reported separately in classification 1405(;;);

- Paratransit services offered in conjunction with a municipal bus or transit system which are ~~((to be))~~ included in classification 0803 or 1501 as appropriate(;;);

- Ambulance services which are ~~((to be))~~ reported separately in classification 1405(;;);

- Limousine drivers ~~((who are to be reported separately in));~~ see classification 6301(;;); and

- Dispatchers with no other duties who are ~~((to be))~~ reported separately in classification 4904.

Special note: Care should be exercised in determining what type of cabulance service is being provided. This classification *is not to be* assigned when provided as an incidental part of a taxi cab service subject to classification 1401. A cabulance service as defined in this rule will need a specialized van or bus to transport passengers as opposed to a passenger automobile that is not equipped to accommodate special mobility needs. The transportation service must be prearranged.

~~((Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.))~~

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6301 Classification 6301.**Lot and marina sales personnel for vehicles and pleasure craft; driving instructors, and limousine drivers**

Classification **6301** is a standard exception classification, as described in WAC 296-17-31018 Exception classifications, with restrictions on both the type of work and where the work can take place. If any of a worker's duties are excluded from **6301** because of restrictions described in this

rule, then none of the worker's hours may be reported in classification **6301**.

Special note: Care must be taken to:

- Look beyond job titles such as "salesperson" or "driving instructor." Job titles do not ensure the work or the workplace meet the requirements for **6301**;

- Ensure standard exceptions are permitted - Some basic classifications include sales;

- Ensure workers assigned to classification **6301** perform no work other than what is allowed by this classification and that permitted in WAC 296-17-4904.

Classification **6301** is restricted to the following work areas:

- Those allowed for office work in WAC 296-17A-4904;
- Classrooms;
- Sales lots and other sales display areas;
- In a vehicle/water craft for a test drive or instruction;
- Operating a "special occasion" limousine.

Classification **6301** includes all activities allowed by WAC 296-17A-4904 (office workers) as well as:

- Test driving;
- Showing and demonstrating products;
- Sales training;
- In car driving instruction for driving schools;
- Driving for limousine services that take people to and from special events by appointment.

Classification **6301** excludes:

- Classroom instructors or administrators at driving schools performing no work inside vehicles, who are reported separately in classification **6103**;

- Vehicle repair or maintenance work reported separately in classification **3411**;

- In vehicle driving instructors for high schools, who are reported in classification **6104**;

- Airport limousine services or similar shuttle type operations that are reported separately in classification **1407**;

- On call taxi-type services (~~that are reported separately in~~) See classification **1401**;

- Dealership employees responsible for transporting vehicles (such as cars purchased at an auction) who are reported separately in classification **3411**.

For administrative purposes, classification **6301** is divided into the following subclassifications:

6301-00 Sales personnel: Vehicles and marine pleasure craft

6301-06 Instructors of driving schools

6301-07 Limousine drivers

~~((**Special note:** The owner of a limousine is responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing and the for-hire vehicle certification will be revoked until payment is made. See also WAC 296-17-35203(9), Special reporting instruction.))~~

WSR 15-19-086
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-343—Filed September 16, 2015, 1:17 p.m., effective October 11, 2015]

Effective Date of Rule: October 11, 2015.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Pursuant to RCW 34.05.380 (3)(c), Washington department of fish and wildlife finds that an effective date earlier than the normal thirty-one day time period following the filing of this rule is needed to avoid imminent peril to the public welfare. In the agency's determination, there are significant direct and indirect economic impacts to Grays Harbor fishermen, their families, and that portion of the local economy supported through their activities, that would accrue if the contemplated fishery is not opened on October 11, 2015.

In support of this finding, the agency estimates that the ex vessel value lost in delaying the start of the commercial fishery for thirty-one days following filing with the code reviser would be approximately \$10,000, or nearly eight percent of the total ex vessel value of the fishery. In addition to that direct economic loss, there would very likely be indirect, but nonetheless very real, economic losses to the local economy.

If days lost through a delay in starting the commercial fishery were redistributed via a reconfiguration of the October season using emergency rules or modifying the current proposed rules in conformity with RCW 34.05.240, a small portion of the loss might be recovered, yielding a net direct loss of approximately \$8,000 or approximately seven percent of the estimated ex vessel value. Additional indirect losses would also remain. In addition, compression of the commercial fishery into October would further result in unanticipated and unintended consequences for the recreational fishery and the economic benefits that the local economy is expected to receive from that fishery. These losses are not an acceptable alternative and would not fully address the imminent peril to public welfare. For these reasons, an earlier effective date of October 11, 2015, is established as necessary by these findings.

Purpose: Amends rules for commercial salmon fishing in Grays Harbor. These rules incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 15-12-116 on June 3, 2015.

Changes Other than Editing from Proposed to Adopted Version: Removed option for fishing the evening of October 14.

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: September 11, 2015.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 14-20-023, filed 9/19/14, effective 10/20/14)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
(12:00 p.m. October 22 through 8:00 p.m. October 22;	Area 2A and Area 2D
6:00 a.m. October 23 through 6:00 p.m. October 23;	
12:00 p.m. October 28 through 8:00 p.m. October 28;	
7:00 a.m. October 29 through 7:00 p.m. October 29;	
12:00 p.m. November 3 through 8:00 p.m. November 3;	
7:00 a.m. November 4 through 7:00 p.m. November 4;	
7:00 a.m. November 5 through 7:00 p.m. November 5;	
AND	
12:00 p.m. November 11 through 8:00 p.m. November 11.	
12:00 p.m. October 28 through 11:59 p.m. October 29;	Area 2C
12:00 p.m. November 4 through 11:59 p.m. November 5;	

Time:	Areas:
AND	
12:00 p.m. November 12 through 11:59 p.m. November 12.)	
7:00 a.m. through 11:59 a.m. October 11;	Area 2A and Area 2D
12:30 p.m. through 4:30 p.m. October 14;	
8:30 a.m. through 5:30 p.m. October 18;	
8:30 a.m. through 5:30 p.m. October 19;	
8:00 a.m. through 5:00 p.m. October 20;	
8:00 a.m. through 5:00 p.m. October 21;	
8:00 a.m. through 5:00 p.m. November 1;	
8:00 a.m. through 5:00 p.m. November 2;	
8:00 a.m. through 5:00 p.m. November 3;	
AND	
8:00 a.m. through 5:00 p.m. November 4.	
6:30 a.m. through 3:30 p.m. October 26;	Area 2C
AND	
6:30 a.m. through 3:30 p.m. October 27.	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October ((24)) 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the

bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October ((2+)) 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead and wild (unmarked) coho must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A, 2C, and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October ((2+)) 1 through November 30.

(5) Retention of any species other than Chinook, chum, or hatchery coho marked by a healed scar at the site of the adipose fin, or shad, is prohibited in Area 2C from October ((2+)) 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on October ((2+)) 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 15-19-087

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed September 16, 2015, 1:36 p.m., effective October 17, 2015]

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

Purpose: To adopt a new WAC chapter to implement commerce's role in the voluntary reversion process, as directed by RCW 36.70A.060 (1)(d)(v).

The new rule is chapter 365-199 WAC, Procedures for making a determination of compliance for jurisdictions seeking voluntary reversion to partial planning status.

Statutory Authority for Adoption: RCW 36.70A.060 (1)(d)(v).

Adopted under notice filed as WSR 15-12-043 on May 27, 2015.

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 5, 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: September 1, 2015.

Dan McConnon
for Brian Bonlender
Director

Chapter 365-199 WAC

PROCEDURES FOR MAKING A DETERMINATION OF COMPLIANCE FOR JURISDICTIONS SEEKING VOLUNTARY REVERSION TO PARTIAL PLANNING STATUS

NEW SECTION

WAC 365-199-010 Purpose and authority. (1) The purpose of this chapter is to outline the procedures the department shall use when making a determination of compliance under RCW 36.70A.060 (1)(d).

(2) These rules are adopted under the authority of RCW 36.70A.060 (1)(d)(v).

NEW SECTION

WAC 365-199-020 Definitions. "Department" means department of commerce.

NEW SECTION

WAC 365-199-030 Review and application process. (1) A county that is not in compliance with RCW 36.70A.060, 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time it adopts a resolution for voluntary reversion, under RCW 36.70A.060 (1)(d) must apply to the department for a determination of compliance.

(2) Notice of intent to apply for a determination of compliance.

(a) Not less than one hundred twenty days prior to applying for a determination of compliance, the county must notify the department in writing that it intends to apply for a determination of compliance. Prior notification allows the depart-

ment to review proposed actions prior to final adoption and advise the county of the actions necessary to achieve compliance.

(b) The notice of intent to apply for a determination of compliance must include:

(i) A statement of all of the issues in which the county is not in compliance with the requirements of the Growth Management Act.

(ii) If applicable, a list of final orders, including number in which the growth management hearings board or court found the county not in compliance with the requirements of the Growth Management Act.

(iii) A proposed schedule identifying the actions necessary to come into compliance.

(iv) Identification of the date which the county intends to apply for a determination of compliance.

(c) The department will consult with state agencies with expertise that would be helpful in making its determination of compliance.

(d) Public notice of intent to apply for determination of compliance.

(i) The department will publish notice in the *Washington State Register* that a county has notified the department of its intent to request certification.

(ii) The department will post a copy of the notice of intent to apply for a determination of compliance on the department web site.

(iii) The department will notify state agencies with expertise that a county has notified the department of its intent to apply for a determination of compliance.

(iv) The department will notify the parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(3) Procedures for an application of determination of compliance.

(a) After taking the legislative action necessary to address the outstanding noncompliance issues, the county may apply to the department for a determination of compliance. A county must submit its application to the department by January 30, 2017.

(b) An application for a determination of compliance must include, at a minimum, the following items:

(i) A cover letter from the board of county commissioners requesting a determination of compliance;

(ii) A copy of the adopted ordinance or resolution taking the legislative action or actions required to comply with RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172;

(iii) A statement of actions the county has taken to address the growth management hearings board's or court's final order or orders; and how the actions taken are sufficient to address the remaining noncompliance orders; and

(iv) A copy of the record developed by the county during the process of coming into compliance. The record of adoption must include copies of any public testimony submitted at the hearings required by (c) of this subsection;

(c) The actions necessary to come into compliance must include at a minimum, one hearing and opportunity for public comment on a statement of the issues on which the county is

out of compliance, and one hearing and opportunity to comment on the changes proposed to bring the county into compliance.

(4) Compliance determination procedures.

(a) The department must approve or deny the application within one hundred twenty days, or by June 30, 2017, whichever date is earlier.

(b) The department will issue its decision in the form of a written statement, including findings of fact and conclusions, and noting the date of the issuance of its decision.

(c) The department will publish its decision on the application for determination of compliance as follows:

(i) Notify the county in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the agency web site;

(iv) Notify state agencies with expertise with which department consulted regarding the determination of compliance;

(v) Notify parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(5) If the department denies an application for a determination of compliance, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.040 (2)(b) is no longer in effect.

NEW SECTION

WAC 365-199-040 Evaluation criteria. Criteria for evaluation of applications.

(1) The determination of compliance requires a finding that the county's comprehensive and development regulations, including critical areas regulations, are in compliance with the requirements of RCW 36.70A.040(4), 36.70A.060, 36.70A.070(5), 36.70A.170, and 36.70A.172.

(2) The scope of the department's review is limited to outstanding findings of noncompliance established in an order from the growth management hearings board or court. Issues or provisions of the ordinance that were found in compliance, or were not timely challenged at the time of adoption, are not subject to review by the department.

(3) The department must base its decision on the record developed by the county during the process of coming into compliance.

NEW SECTION

WAC 365-199-050 Sharing of appeal costs. (1) If the department approves an application for determination of compliance, the department and the county must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(2) If the department denies an application for determination of noncompliance, the county is not required to share in the cost of defending the agency action.

WSR 15-19-092
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed September 16, 2015, 3:52 p.m., effective October 17, 2015]

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

Purpose: The securities division is hereby adopting a rule to preserve filing requirements in connection with offerings of securities made under Tier 2 of the Securities and Exchange Commission's newly adopted rules for Regulation A offerings. The final rule will be codified at WAC 460-18A-200. On March 25, 2015, the Securities and Exchange Commission adopted final rules providing for a federal exemption from registration for offerings of securities of up to \$50 million as authorized by the JOBS Act of 2012. See Amendments to Regulation A, Securities Act Release Nos. 33-9741, 34-74578, 39-2501, available at <http://www.sec.gov/rules/final/2015/33-9741.pdf>. These rules adopted a definition of "qualified purchaser" pursuant to Sec. 18(b)(3) of the Securities Act of 1933 that extends to "any person to whom securities are offered or sold" in offerings of up to \$50 million in a Tier 2 offering under federal Regulation A. While the effect of defining a "qualified purchaser" in this manner is to preempt the states from requiring registration of these smaller and less regulated offerings, states retain the authority to require the filing of offering materials, a consent to service of process, and fees that would otherwise be required in the absence of preemption. The securities division is now adopting a rule to require the filing of a notice filing form, a consent to service of process, and the fees that would otherwise be required in connection with the registration of these securities offerings but for preemption by the Securities and Exchange Commission.

Statutory Authority for Adoption: RCW 21.20.327, 21.20.340, 21.20.450.

Adopted under notice filed as WSR 15-15-038 on July 8, 2015.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received in response to the notice of proposed rule making, the text of the proposed rule was revised to move the deadline by which the required notice filing must be submitted from a date "prior to the initial offer in this state" to a date that is "at least twenty-one calendar days prior to the initial sale in this state."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 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: September 16, 2015.

Scott Jarvis
Director

NEW SECTION

WAC 460-18A-200 Filing requirements—Regulation A Tier 2 offerings. The following provisions apply to offerings made under Tier 2 of federal Regulation A:

(1) Initial filing. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least twenty-one calendar days prior to the initial sale in this state:

(a) A completed Regulation A - Tier 2 Offering Notice Filing Form or other document identifying the filing;

(b) A consent to service of process on Form U-2 if not provided in the Regulation A - Tier 2 Offering Notice Filing Form; and

(c) The filing fee prescribed by RCW 21.20.340 (3)(a). The initial notice filing is effective for twelve months.

(2) Renewal. For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew the unsold portion of its notice filing by filing the following on or before the expiration of the notice filing:

(a) The Regulation A - Tier 2 Offering Notice Filing Form marked "renewal" and/or a cover letter or other document requesting renewal;

(b) The renewal fee prescribed by RCW 21.20.340 (3)(a) to renew the unsold portion of securities for which a filing fee has previously been paid; and

(c) If the amount of securities subject to the notice filing is being increased, the fee prescribed by RCW 21.20.340 (3)(a) to cover the increase in the amount of securities to be offered.

(3) Amendment. An issuer may increase the amount of securities offered in this state by submitting a Regulation A - Tier 2 Offering Notice Filing Form or other document describing the transaction and a fee calculated pursuant to RCW 21.20.340 (3)(a) to cover the increase in the amount of securities being offered.

WSR 15-19-099

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 17, 2015, 3:40 p.m., effective October 18, 2015]

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

Purpose: The department is amending WAC 388-400-0040 regarding the definition of "disabled" for supplemental nutrition assistance program (SNAP or Basic Food in Washington) clients. The definition is amended to include clients that receive state general assistance benefits under chapter 388-449 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0040.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08A.120, and 7 C.F.R. 271.2.

Adopted under notice filed as WSR 15-14-067 on June 26, 2015.

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 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: September 16, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program? The Washington Basic Food program (Basic Food) is a federally funded nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

(1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0034 and 388-408-0035.

(2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements of:

(a) The most current version of the Food and Nutrition Act of 2008;

(b) Federal regulations adopted by the U.S. Department of Agriculture, Food and Nutrition Services (FNS) related to the supplemental nutrition assistance program (SNAP); and

(c) Standards FNS publishes each year for income limits, resource limits, income deductions, and benefit amounts for SNAP.

(3) To be eligible for Basic Food benefits, each AU member must:

(a) Meet the citizenship or alien status requirements of WAC 388-424-0020.

(b) Be a resident of the state of Washington as required under WAC 388-468-0005;

(c) Give us their Social Security number as required under WAC 388-476-0005;

(d) Give us proof of identity as required under WAC 388-490-0005;

(e) Meet the Basic Food work requirements under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(4) To be eligible for Basic Food, your AU must:

(a) Have total monthly income before taxes and deductions at or under the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as part of your AU's gross monthly income;

(b) Have net income at or under the net monthly income standard under WAC 388-478-0060. We subtract deductions allowed under WAC 388-450-0185 to determine your AU's net monthly income.

(c) Have resources we must count under WAC 388-470-0055 that are at or below your AU's resource limit under WAC 388-470-0005;

(d) Report changes of circumstances as required under WAC 388-418-0005; and

(e) Complete a mid-certification review and provide proof of any changes if required under WAC 388-418-0011.

(5) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard, and have resources over the resource limit and still be eligible for benefits.

(6) If your AU has income at or under the gross income standard or is categorically eligible for Basic Food, we determine if you are eligible for Basic Food and calculate your monthly benefits as described under WAC 388-450-0162.

(7) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to receive more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470 WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for a portion of the out-of-pocket medical expenses for the elderly or disabled individual as described under WAC 388-450-0200; and

(d) Being exempt from the **gross monthly income** standard under WAC 388-478-0060.

(8) For Basic Food, **elderly** means a person who is age sixty or older;

(9) For Basic Food, **disabled** means a person who:

(a) Receives SSI;

(b) Receives disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) Receives disability retirement benefits from a state, local or federal government agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(d) Receives state general assistance benefits based on blindness or disability criteria under chapter 388-449 WAC;

(e) Receives disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

(i) Meets Title XIX disability requirements; or

(ii) Is eligible for medicare.

((~~e~~)) (f) Receives disability-related medical assistance under Title XIX of the Social Security Act;

((~~f~~)) (g) Is a veteran and receives disability payments based on one hundred percent disability;

((~~g~~)) (h) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently house-bound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the U.S.C..

(10) If a person in your household attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not count this person as a member of your AU under WAC 388-408-0035.

(11) If your AU currently receives food benefits under WASHCAP or lives on or near an Indian reservation and receives benefits from a tribal food distribution program approved by FNS, your AU is not eligible for food assistance benefits through the Washington Basic Food program.

(12) If a person in your AU is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status as defined in WAC 388-424-0001;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

WSR 15-19-102

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed September 18, 2015, 8:20 a.m., effective October 19, 2015]

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

Purpose: Format changes to change "shall" to "will" or "must" are needed. Title 49 C.F.R. 571 standards need to be added so that all are adopted, and the section subsequently renumbered. Unnecessary purpose section needs to be removed. Chapter needs additional grammar cleanup. Web site link to C.F.R. page needs to be changed. Clarification language needs to be added to WAC 204-10-030.

Citation of Existing Rules Affected by this Order: Repealing WAC 204-10-012; and amending WAC 204-10-014, 204-10-021, 204-10-022, 204-10-024, 204-10-026, 204-10-028, 204-10-030, and 204-10-036.

Statutory Authority for Adoption: RCW 46.37.005.

Adopted under notice filed as WSR 15-15-128 on July 17, 2015.

Changes Other than Editing from Proposed to Adopted Version: Removed the changes to the height limit for bumpers of passenger vehicles. The current restriction of twenty-

two inches remains. Removed proposed changes regarding windshield height.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@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 8, Repealed 1.

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

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

Date Adopted: September 15, 2015.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-22-078, filed 11/3/09, effective 12/4/09)

WAC 204-10-014 Definitions. (1) "Eye glasses" means any spectacles, sunglasses, or goggles having two separately mounted lenses, ~~((but shall exclude))~~ excluding contact lenses.

(2) "Goggles" means an optical device worn ~~((before))~~ over the eyes, the predominant function of which is to protect the eyes without obstructing peripheral vision. They provide protection from the front and sides and may or may not form a complete seal with the face.

(3) "Face shield" means an eye protector attached to a helmet or headband(s) and which covers the wearer's eyes and face at least to a point approximately to the tip of the nose and whose predominant function is protection of the eyes.

(4) "FMVSS" means Federal Motor Vehicle Safety Standard, ~~((chapter))~~ Title 49 Code of Federal Regulations (C.F.R.) Part 571.

(5) "Headband" means ~~((that))~~ the part of ((the)) an eye protection device consisting of a supporting band or other structure that either encircles the head or protective helmet, or can be attached thereto.

(6) "Motor vehicle" means passenger vehicles, multipurpose passenger vehicles, motorcycles, trucks, and buses which are intended for use on public highways, excluding commercial vehicles as defined under RCW 46.04.140.

(7) "Recognized manufacturer" means a person, firm, copartnership, association, or corporation who is or has engaged in the business of manufacturing motor vehicles intended for use on the public highways and offered for sale in interstate commerce.

(8) "Reflectorized warning device" means any device ~~((defined))~~ listed in RCW 46.37.450 or any device composed

of a reflective sheeting material which consists of spherical lens elements embedded with a transparent plastic having a smooth, flat outer surface. The sheeting ~~((shall))~~ must be weather resistant and have a protected, low tac, precoated adhesive backing.

(9) "Reflex reflector" means a device that is used on vehicles to give an indication of presence to an approaching driver by reflecting light from the headlamps of the approaching vehicle.

(10) "SAE" means the Society of Automotive Engineers. Copies of the SAE Standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15086-7511.

(11) "Wheelchair conveyance" means any vehicle specially manufactured or designed for transportation of a physically or medically impaired person who is either wheelchair-bound or otherwise walking impaired. The vehicle may be a separate vehicle used in lieu of a wheelchair or a vehicle used for transporting the impaired person who is simultaneously occupying a wheelchair.

AMENDATORY SECTION (Amending WSR 12-17-115, filed 8/21/12, effective 9/21/12)

WAC 204-10-021 Adoption of federal standards. The Washington state patrol adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 571 Federal Motor Vehicle Safety Standards (FMVSS) for vehicle equipment standards. The patrol adopts the version of FMVSS in effect on the effective date of this section unless otherwise prescribed under state law. The FMVSS as outlined in Title 49 C.F.R. 571 are as follows:

1. 101 - Controls and displays.
2. 102 - Transmission shift ~~((lever))~~ position sequence, starter interlock, and transmission ~~((brake))~~ braking effect.
3. 103 - Windshield defrosting and defogging systems.
4. 104 - Windshield wiping and washing system.
5. 105 - Hydraulic and electric brake systems.
6. 106 - Brake hoses.
7. 108 - Lamps, reflective devices, and associated equipment.
8. 109 - New pneumatic and certain specialty tires.
9. 110 - Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.
10. 111 - ~~((Rearview mirrors))~~ Rear visibility.
11. 113 - Hood latch system.
12. 114 - Theft protection and rollaway prevention.
13. 116 - Motor vehicle brake fluids.
14. 117 - Retreaded pneumatic tires.
15. 118 - Power-operated window, partition, and roof panel systems.
16. 119 - New pneumatic tires for ~~((vehicles other than passenger cars))~~ motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles.
17. 120 - Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for

motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).

- 18. 121 - Air brake systems.
- 19. 122 - Motorcycle brake systems.
- 20. ~~122a~~ - Motorcycle brake systems.
- ~~21~~. 123 - Motorcycle controls and displays.
- ~~(21)~~ ~~22~~. 124 - Accelerator control systems.
- ~~(22)~~ ~~23~~. 125 - Warning devices.
- ~~(23-)~~ ~~24~~. 126 - Electronic stability control systems.
- ~~25~~. 129 - New non-pneumatic (~~radial~~) tires for (~~light vehicles~~) passenger cars.
- ~~(24)~~ ~~26~~. 131 - School bus pedestrian safety devices.
- ~~(25)~~ ~~27~~. 135 - Light vehicle brake systems.
- ~~(26)~~ ~~28~~. 138 - Tire pressure monitoring systems.
- ~~(27)~~ ~~29~~. 139 - New pneumatic radial tires for light vehicles.
- ~~(28)~~ ~~30~~. 201 - Occupant protection in interior impact.
- ~~(29)~~ ~~31~~. 202 - Head restraints; (~~mandatory applicability begins on September 1, 2008~~) Applicable at the manufacturer's option until September 1, 2009.
- ~~32~~. 202a - Head restraints; Mandatory applicability begins on September 1, 2009.
- ~~(30)~~ ~~33~~. 203 - Impact protection for the driver from the steering control system.
- ~~(31)~~ ~~34~~. 204 - Steering control rearward displacement.
- ~~(32)~~ ~~35~~. 205 - Glazing materials.
- ~~(33-)~~ ~~36~~. 205a - Glazing equipment manufactured before September 1, 2006 and glazing materials used in vehicles manufactured before November 1, 2006.
- ~~37~~. 206 - Door locks and door retention components.
- ~~(34)~~ ~~38~~. 207 - Seating systems.
- ~~(35)~~ ~~39~~. 208 - Occupant crash protection.
- ~~(36)~~ ~~40~~. 209 - Seat belt assemblies.
- ~~(37)~~ ~~41~~. 210 - Seat belt assembly anchorages.
- ~~(38)~~ ~~42~~. 212 - Windshield mounting.
- ~~(39)~~ ~~43~~. 213 - Child restraint systems.
- ~~(40)~~ ~~44~~. 214 - Side impact protection.
- ~~(41)~~ ~~45~~. 216 - Roof crush resistance; Applicable unless a vehicle is certified to § 571.216a.
- ~~46~~. 216a - Roof crush resistance; Upgraded standard.
- ~~(42)~~ ~~47~~. 217 - Bus emergency exits and window retention and release.
- ~~(43)~~ ~~48~~. 218 - Motorcycle helmets.
- ~~(44)~~ ~~49~~. 219 - Windshield zone intrusion.
- ~~(45)~~ ~~50~~. 220 - School bus (~~roll-over~~) rollover protection.
- ~~(46)~~ ~~51~~. 221 - School bus body joint strength.
- ~~(47)~~ ~~52~~. 222 - School bus passenger seating and crash protection.
- ~~(48)~~ ~~53~~. 223 - Rear impact guards.
- ~~(49)~~ ~~54~~. 224 - Rear impact protection.
- ~~(50)~~ ~~55~~. 225 - Child restraint anchorage systems.
- ~~(51-)~~ ~~56~~. 226 - Ejection mitigation.
- ~~57~~. 301 - Fuel system integrity.
- ~~(52)~~ ~~58~~. 302 - Flammability of interior materials.
- ~~(53)~~ ~~59~~. 303 - Fuel system integrity of compressed natural gas vehicles.
- ~~(54)~~ ~~60~~. 304 - Compressed natural gas fuel container integrity.

~~(55)~~ ~~61~~. 305 - Electric-powered vehicles: Electrolyte spillage and electrical shock protection.

- ~~(56)~~ ~~62~~. 401 - (~~Internal~~) Interior trunk release.
- ~~(57)~~ ~~63~~. 403 - Platform lift systems for motor vehicles.
- ~~(58)~~ ~~64~~. 404 - Platform lift installations in motor vehicles.
- ~~(59)~~ ~~65~~. 500 - Low-speed vehicles.

Links to 49 C.F.R. 571 are available (~~on the Washington state patrol web site at www.wsp.wa.gov~~) at www.ecfr.gov. Copies of the C.F.R. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

AMENDATORY SECTION (Amending WSR 12-03-085, filed 1/13/12, effective 2/13/12)

WAC 204-10-022 Body requirements. (1) Defroster and defogging devices: Every enclosed motor vehicle must be equipped with a device capable of defogging and defrosting the windshield area. Vehicles or exact replicas of vehicles manufactured prior to January 1938 are exempt from this requirement.

(2) Door latches: Every enclosed motor vehicle equipped with side doors leading directly into a compartment that contains one or more seating accommodations must be equipped with door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened both from the inside and outside.

(3) Hoodlatches: A front opening hood must be equipped with a primary and a secondary latching system to hold the hood in a closed position.

Hoods are optional equipment on vehicles defined as street rod vehicles, custom vehicles and kit vehicles.

(4) Enclosed passenger compartment: A motor vehicle with an enclosed passenger compartment and powered by an internal combustion engine must be constructed to prevent the entry of exhaust fumes into the passenger compartment.

(5) Floor pan: A motor vehicle must be equipped with a floor pan under the entire passenger compartment capable of supporting the weight of the number of occupants that the vehicle is designed to carry.

(6) Bumpers: A motor vehicle must be equipped with a bumper on both the front and rear of the vehicle with the exception of motor vehicles where the original or predominant body configuration, provided by a recognized manufacturer, did not include such bumper or bumpers in the design of the vehicle. For the relevant model year, bumpers must accommodate recognized manufacturer impact absorption systems pursuant to applicable SAE Bumper Standards or equivalent standards.

Bumpers are optional equipment on vehicles defined as street rod vehicles, custom vehicles and kit vehicles.

Bumpers, unless specifically exempted above, must:

- (a) Be at least four and one-half inches in vertical height.
- (b) Be centered on the vehicle's centerline.
- (c) Extend no less than the width of the respective wheel track distances.
- (d) Be attached to the vehicle in a manner equivalent to the original manufacturer's installation.

(e) Be horizontal load bearing and attach to the vehicle frame to effectively transfer energy when impacted.

(f) Be mounted at a maximum height based on the vehicle classification and original gross vehicle weight rating (GVWR) of the vehicle, measured from a level surface to the highest point on the bottom of the bumper. For vehicles exempted from the bumper requirement for the reasons stated above, a maximum frame elevation measurement must be made to the bottom of the frame rail. Maximum heights are as follows:

	Front	Back
Passenger Vehicles <u>and</u> <u>Neighborhood Electric</u> <u>Vehicles</u>	22 Inches	22 Inches
<u>For Trucks:</u>		
4,500 lbs. and under GVWR	24 Inches	26 Inches
4,501 lbs. to 7,500 lbs. GVWR	27 Inches	29 Inches
7,501 lbs. and over GVWR	28 Inches	30 Inches

A blocker beam or additional bumper may not be used to meet the above requirements.

(g) If an existing bumper from a recognized manufacturer is not used and a special bumper is fabricated, it must be certified as meeting the bumper standards set under 49 C.F.R. 581.

(7) Fenders: All wheels of a motor vehicle must be equipped with fenders designed to cover the entire tire tread width that comes in contact with the road surface. Coverage of the tire tread circumference must be from at least fifteen degrees in front and to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of the wheel rotation. At no time can the tire come in contact with the body, fender, chassis, or suspension of the vehicle. Street rods and kit vehicles which are more than forty years old and are owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads.

(8) Frame: A motor vehicle must be equipped with a frame. If an existing frame from a recognized manufacturer is not used and a special frame is fabricated, it must be constructed of wall box or continuous section tubing, wall channel, or unitized construction capable of supporting the vehicle, its load, and the torque produced by the power source under all conditions of operation. The structural strength of the frame must be certified by the builder as meeting the applicable standards set under 49 C.F.R. 571 Parts 201, 214, 216, and 220 through 224, and the SAE Standards. Such certification must be made by either:

(a) Certification provided on the vehicle in the form of a label which has been affixed in accordance with FMVSS outlining the portions of the FMVSS which have been met; or

(b) A notarized letter from the builder of the frame outlining the portions of the Federal Motor Vehicle Safety Standards (FMVSS) which have been met; or

(c) If the vehicle is a kit vehicle, as outlined in RCW 46.12.440, documentation from the manufacturer of the vehicle frame that informs the owner that the frame has not been certified as meeting the applicable federal motor vehicle safety standard set under 49 C.F.R. 571 Parts 201, 214, 216, and 220 through 224, and the applicable SAE Standards.

AMENDATORY SECTION (Amending WSR 09-22-078, filed 11/3/09, effective 12/4/09)

WAC 204-10-024 Windows. (1) The windshield must be framed and in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed windshield glass must be six inches, or as originally equipped by a recognized manufacturer.

(2) The vehicle must be provided with a windshield and side windows or openings which allow the driver a minimum outward horizontal vision capability, ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This range of vision:

(a) May be interrupted by window framing not exceeding four inches in width at each side location.

(b) Must have no obstruction forward of the windshield which extends more than two inches upward into the horizontally forward projected vision area of the windshield except windshield wiper components and hood ornaments identical to those originally installed by a recognized manufacturer. For the purposes of this section, the projected vision area of the windshield (~~shall~~) will be defined as that area above a line from the top of the steering wheel to the top of the front fenders or hood, whichever is higher.

(3) If a windshield is not required under 49 C.F.R. 571, the operator must wear eye protection as outlined in chapter 46.37 RCW and WAC 204-10-026.

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-026 Eye protection. If a vehicle does not have a windshield, and the driver is required to wear eye protection(~~is~~) by chapter 46.37 RCW, the eye protection device (EPD) must:

(1) Be one of the following: Goggles, face shield, or eye glasses.

(a) Eye glasses must:

(i) Have a convex frontal surface on each lens, or be an ophthalmic corrective lens.

(ii) Have a minimum area of three square inches or 19.356 square centimeters for each lens. The horizontal diameter (or side-to-side measurement) must be no less than two inches or 50 millimeters. The vertical diameter (or top-to-bottom measurement) must be no less than one and one-half inches or 38 millimeters. A diameter must pass through a point on the lens that is intended to be directly in front of the pupil of the eye when the wearer is looking straight ahead.

(b) Optical correction of a person's vision, where required or desired, may be provided either:

(i) By an EPD that provides the proper optical correction; or

(ii) By personal corrective lenses worn under an EPD that does not disturb the adjustment of those lenses.

(2) Not have any sharp edges or projections that could cause harm or discomfort to the wearer.

(3) Be made of durable quality.

((Example: Material characteristics must not undergo appreciable alterations under the influence of aging or of the circumstances of use to which the device is normally subjected (exposure to sun, rain, cold, dust, vibrations, contact of the skin, effects of sweat, or of products applied to the hair or skin:))

(4) Have a headband capable of holding the EPD securely under normal operating conditions. It must be capable of easy adjustment and replacement.

(5) Not use material(s) commonly known to cause skin irritation or disease for those parts of the device which come into contact with the skin.

(6) Where plastic materials are used, use noncombustible or slow burning materials.

(7) Not use cellulose nitrate, or materials having flammability characteristics approximately those of cellulose nitrate.

(8) Be tested on a standard human head form in a position simulating its position in actual use.

((Example: Helmet-mounted face shields must be tested while attached to an appropriate medium-size helmet supplied by the manufacturer of the face shield, which must be mounted on a standard head form:))

The test must:

(a) Use a steel projectile three-eighths inches in diameter, weighing 1.56 ounces approximately two and one-half inches long with a conical point of ninety degrees included angle, the point having a spherical radius no greater than .020 inches and a hardness of 60(10) on the Rockwell "C" scale, which must be freely dropped from a height of fourteen feet above the EPD. The projectile may be guided, but not restricted in its vertical fall by dropping it through a tube extending to within approximately four inches of the impact area. The impact area must be on the forward optical surface and within one-inch diameter circle centered over the eye opening. The impact point ~~((shall))~~ must be perpendicular to a plane tangent to the impact area.

(b) Not allow penetration of the projectile through the EPD. Cracking or piercing of the EPD is permissible provided that the projectile does not pass through or remain lodged in the EPD lens, but is repulsed by the EPD, and that no particles of the EPD ~~((shall))~~ will break loose from any eyeward surface of the EPD.

(c) Be performed at room temperature (sixty-five degrees to eighty-five degrees F) under normal humidity conditions.

(d) If plastic materials are used, expose the EPD to a test to determine the flame-propagation rate. The specimen must be ignited by holding one end of the specimen horizontally at the top of a luminous three quarter-inch Bunsen burner flame in a draft-free room. The rate of propagation of burning, after removing the flame from the specimen, determined by a stop watch, ~~((shall))~~ must be one inch or less per twenty-four seconds. A faster rate of propagation ~~((shall))~~ will be cause for rejection.

(9) Have lenses that comply with the following requirements:

(a) Lenses must be made of material suitable for ophthalmic use, and must be free from striae, waves, bubbles, or any other defects which may impair their optical quality.

(b) The prismatic effect of a noncorrective lens must not exceed 1/8 diopter at any point with the specified minimum field of vision. In the case of eye glasses, each noncorrective lens must comply with the limitation of prismatic effect.

(c) In any meridian, the refractive power of a noncorrective lens must not exceed plus or minus 1/8 diopter and the difference between the refractive powers in any two meridians must not exceed 1/8 diopter.

(d) The definition afforded by a noncorrective lens must be such that a line pattern with lines separated not more than twenty-four seconds of angle must be clearly distinguishable when viewed through the lens.

(e) The compliance of a lens with the prismatic effects, refractive power, and definition requirements of (a), (b), and (c) of this subsection must be determined in accordance with those test methods described in Sections 6.3.4.1.1, 6.3.4.1.2, and 6.3.4.1.3 of the American National Standards Institute Standard Z87.1-1968, September 18, 1968, "Eye and Face Protection" and explained in Section 10.1 of the National Bureau of Standards Circular 533, May 20, 1953, "Method for Determining the Resolving Power of Photographic Lenses." In order to maintain consistency in the results of tests conducted by various organizations, the following test requirements must be met:

(i) An 8-power telescope with focusing arrangement to accommodate the refractive effects of both positive (converging) and negative (diverging) lenses placed between the telescope and test chart ~~((shall))~~ must be used. The illuminated target and test chart ~~((shall))~~ must be a central dot and a concentric circle one-inch in diameter plus one of the high contrast ("black and white") NBS Resolution Test Charts, dated 1952, and printed on "Lens Resolution Chart to Accompany NBS Circular 533." The chart ~~((shall))~~ must be perpendicularly aligned thirty-five feet from the objective lens of the telescope when the telescope is properly focused with no test, sample, or other lens between the objective lens and the chart. The center dot and the periphery of the concentric circle one-inch in diameter ~~((shall))~~ must be used when testing for prismatic effect. The test pattern marked "20" ~~((shall))~~ must be used when testing for refractive power and when testing for definition. Standard lenses of plus or minus 1/8 diopter ~~((shall))~~ must be used when testing for refractive power.

(ii) Other standard methods of test or examination that are equivalent or superior, as regards to accuracy, quality, and consistency of results to (e)(i) of this subsection specified in National Bureau of Standards methods, may be used to determine compliance only when such methods are approved by the state official to whom such approving authority has been assigned, or delegated, through due process of applicable state law.

(10) Not obstruct a horizontal field of vision to at least one hundred five degrees to the right side of the plane that passes through the pupil of the right eye looking straight ahead, and at least one hundred five degrees to the left side of the plane that passes through the pupil of the left eye looking

straight ahead, and are parallel to the midsagittal plane, except as provided in (a) of this subsection.

(a) The specified minimum horizontal field of vision must be unobstructed except that the horizontal field provided by the spectacles or sunglasses may be obstructed by the frame in a sector no greater than seven and one-half degrees in horizontal angular width and located between fifty degrees and eighty degrees of the pertinent sagittal plane passing through the eye pupil when looking straight ahead.

(b) When ascertaining the horizontal field of vision afforded by eyeglasses, the pupil of the eye must be assumed to be located 17 mm behind the point on the rear surface of the lens where the horizontal and vertical diameters intersect. When ascertaining the horizontal field of vision of EPDs other than eye glasses, the assumed location of the pupil of the eye relative to the structures of the EPD ((shall)) must be that location which is most likely to occur when the EPD is attached and worn in accordance with its manufacturer's instructions.

(c) No portion of the minimum horizontal field of vision ((shall)) will be obstructed by a temple piece, headband, helmet, helmet attaching device, or any other supporting or attaching device.

(11) Be clear (transmitting not less than eighty-five percent of incident visible radiation) or may be tinted provided that the tint does not impair the wearer's ability to discern color. If the EPD is tinted it must not be used at any time from a half hour after sunset to a half hour before sunrise and at any other time when due to insufficient light or unfavorable atmosphere conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred feet ahead. The luminous transmittance must be determined by one of the following means:

(a) Photometrically by an observer having normal color vision, as determined by recognized color vision chart tests such as those employing pseudoisochromatic plates.

(b) With a physical photometer consisting of a thermopile (or other radiometer) and luminosity solution having a special transmittance curve which coincides closely with the luminous efficiency curve of the average eye.

(c) By measuring the special transmittance and calculating the luminous transmittance through the use of published data on the spectral radiant energy of CIE Source A and the relative luminous efficiency of the average eye.

The standard source of radiant energy used in the measurement of luminous transmittance must be a projection type lamp No. T-8 (or other high-powered, gas-filled tungsten filament incandescent lamp) operated at the color temperature (2854K) corresponding to CIE Source A.

(12) Be identified and labeled as follows:

(a) The EPD ((shall)) must be permanently marked in a manner not to interfere with the vision of the wearer.

(b) The manufacturer's or distributor's trade name and model name or number, which ((shall)) must correspond with the name and number under which the device has been approved or certified.

(c) That the device meets the standard VESC-8. Where space is limited, V-8 may be used in lieu of VESC-8.

(d) The information required under subsection (l) of this section plus the corporate or business name and address of

either the actual manufacturer or the marketer assuming the responsibilities of the manufacturer ((shall)) must be imprinted on the container in which the EPD is packed and on any instruction sheet(s) pertaining to the EPD.

(e) If the EPD is tinted, the following statement ((shall)) must appear in a prominent location on the container or label: **This tinted eye protective device is for daytime use only.**

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-028 Instrumentation and electrical system requirements. (1) A motor vehicle must be equipped with an operating speedometer calibrated to indicate "miles per hour," and may also indicate "kilometers per hour."

(2) The headlamp circuit for a motor vehicle must be equipped with a driver-controlled high and low beam selector switch unless the vehicle is equipped with single beam headlamps.

(3) If a motor vehicle is manufactured after 1965, it must be equipped with a hazard warning switch causing all turn signal lamps to flash simultaneously.

(4) The headlamp switch for a motor vehicle must activate the headlamps, tail lamps, license plate lamp, and when required, marker lamps simultaneously.

(5) An indicator must be provided on a motor vehicle which indicates to the driver when the high beams of the headlamp system are energized. The indicator ((shall)) must emit a light other than white plainly visible to the driver under normal driving conditions.

(6) A motor vehicle must be equipped with an operable horn capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. No horn or other warning device ((shall)) will emit an unreasonably loud or harsh sound or whistle nor ((shall)) will a bell or siren be used as a warning device. The device used to actuate the horn must be easily accessible to the driver when operating the vehicle.

(7) A motor vehicle, if equipped with an automatic transmission, must be equipped with a safety switch that prevents the starter motor from being actuated except when the gear selector is in the neutral or park position.

(8) If the front signal lamp(s) on a motor vehicle are not readily visible to the driver, there must be an illumination indicator to give the operator a clear, unmistakable indication that the turn signal system is on. The illumination indicator must consist of one or more bright lights flashing at the same frequency as the signal lamps, and it must emit a light other than white.

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-030 Mirrors and backup alert devices. A motor vehicle must be equipped with mirrors as outlined under 49 C.F.R. 571 and RCW 46.37.400. The mirror mountings must provide for mirror adjustment by tilting both horizontally and vertically. The following definitions must be used for additional backup alert devices or mirrors required under RCW 46.37.400(3):

(1) Backup alert devices means any type of motion detection device, laser device, camera, or television device mounted on a truck with a cube-style, walk-in cargo box up to eighteen feet long, which will warn the driver of the detection of a person or object at a minimum of six feet to the rear of the vehicle and also encompass the width of the rear of the vehicle.

(2) Rear crossview mirrors means any type of mirrors which, when mounted, will allow the driver of a truck with a cube-style, walk-in cargo box up to eighteen feet long, to view a minimum distance of six feet to the rear and encompass the width of the rear of the vehicle in order to be able to detect an object or person. These crossview mirrors must be installed in a manner that will satisfy the above requirements.

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-036 Suspension. A motor vehicle must be capable of stable, controlled operation while traversing a slalom-type path passing alternately to the left and right of at least four cones or markers arranged in a straight line and spaced sixty feet apart at a minimum speed of 25 mph.

Body lifts are permitted provided that they are manufactured by an aftermarket manufacturer, designed for the make and model vehicle on which they are installed, and installed according to the manufacturer's recommendations. Body lifts may not use more than a three-inch spacer and may not raise the body more than four inches above the frame when all components are installed.

A motor vehicle must:

(1) Have a minimum ground clearance to allow the vehicle to be in motion on its four rims on a flat surface with no other parts of the vehicle touching that surface and a maximum ground clearance determined based on the table contained in WAC 204-10-022 (6)(f) bumpers.

(2) Have spring mounts and shackles properly aligned and of sufficient strength so as to support the gross weight of the vehicle and provide free travel in an up and down movement under all conditions of operation.

(3) Incorporate antisway devices to control lateral movement in rear coil spring suspension systems.

(4) Have a suspension system that allows movement between the unsprung axles and wheels and the chassis body.

(5) Be equipped with a damping device at each wheel location. The (~~dampening~~) damping device must stop vertical body motion within two cycles when any corner of the vehicle is depressed and released.

(6) Be capable of providing a minimum relative motion of plus and minus two inches.

(7) Not use heating or welding for coil springs, leaf springs, or torsion bars.

(8) Not be constructed or loaded so that the weight on the wheels of any axle is less than thirty percent of the gross weight of the vehicle.

(9) Not raise or lower the height of a motor vehicle while the motor vehicle is traveling more than 15 mph on a public roadway with a posted speed limit of 25 mph or less((-)) except when lawfully participating in a parade permitted by local jurisdiction.

(10) At no time have any portion of any tire of such motor vehicle leave the surface of the roadway.

(11) Not have any portion of the vehicle or component of the hydraulic system used to raise or lower the vehicle cause or emit sparks.

Nothing in this section (~~shall~~) prohibits a county or city from enacting stricter regulations for aftermarket vehicle hydraulics on a public roadway.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 204-10-012 Purpose.

WSR 15-19-103

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed September 18, 2015, 8:26 a.m., effective October 19, 2015]

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

Purpose: Changes to chapter 204-44 WAC include but may not be limited to grammatical and formatting changes that are needed. Standards are needed relating to the safe securing of all loads other than logs, so that citizens are using safe securing devices and not devices such as bungee cords. The diagrams can be removed since a department of labor and industries' WAC has the same diagrams with better quality, which has been referenced.

Citation of Existing Rules Affected by this Order: Repealing WAC 204-44-02001 and 204-44-030; and amending WAC 204-44-010, 204-44-020, and 204-44-040.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.490, 46.37.655.

Adopted under notice filed as WSR 15-15-129 on July 17, 2015.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@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 2, Amended 3, Repealed 2.

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: September 15, 2015.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 90-06-055, filed 3/5/90, effective 4/5/90)

WAC 204-44-010 Promulgation. Under authority of RCW 46.37.005 ~~((and))~~, 46.37.490, and 46.61.655, the ~~((state))~~ patrol hereby adopts the following rules pertaining to the use of safety chains or other devices on vehicles to secure and protect the loads thereon.

NEW SECTION

WAC 204-44-012 Definitions. (1) "Patrol" means the Washington state patrol.

(2) "Securely fastened" as used in RCW 46.37.490, 46.61.655, and this chapter means that the load will be secured using an adequate number of approved tiedown devices to prevent the load from shifting or dropping from the vehicle.

NEW SECTION

WAC 204-44-014 Approved tiedown devices. (1) The following types of tiedown devices are approved by the patrol:

- (a) Steel chain;
- (b) Steel cable;
- (c) Steel strapping; and
- (d) Fiber webbing.

(2) Tiedown devices for a commercial motor vehicle must:

(a) Have a minimum breaking strength of at least 15,000 pounds, except that tiedown devices used to secure baled hay and baled straw may have a breaking strength of not less than 9,000 pounds.

(b) Meet or exceed federal standards contained in 49 C.F.R. 393.102.

(3) Tiedown devices used for all vehicles other than commercial vehicles must have a breaking strength sufficient for the weight of the load being carried.

AMENDATORY SECTION (Amending WSR 78-10-100, filed 10/3/78)

WAC 204-44-020 ~~((Load fastening devices.))~~ Securing logs. ~~((1))~~ (1) Any motor truck, truck tractor, trailer, semi-trailer, or any combination thereof, transporting logs upon a public highway where ~~((binder))~~ tiedown devices are required, ~~((shall))~~ must have the load thereon securely fastened and protected ~~((as follows:))~~ as follows:

(a) ~~((Placement and number of wrappers required))~~ On log trucks using stakes(-):

(i) ~~((In the hauling of))~~ For one log loads, one wrapper chain or cable ~~((shall))~~ will be required and it ~~((shall))~~ must be secured to the rear bunk and the log ~~((shall))~~ must be properly blocked or secured in a manner which will prevent it from rolling or shifting. An additional wrapper(-) secured to the front bunk(-) is optional.

(ii) ~~((In the hauling of))~~ For two log loads, not less than two wrapper chains or cables ~~((shall))~~ will be used to secure the load. The logs ~~((shall))~~ must be properly blocked to prevent them from rolling or shifting.

(iii) ~~((On))~~ For loads consisting of three or four logs not over 44 feet in length, the load ~~((shall))~~ must be secured by not less than two properly spaced wrapper chains or cables. Ends of short logs not secured by such wrappers ~~((shall))~~ must be secured with extra wrappers. If any log is over 44 feet in length, the load ~~((shall))~~ must be secured by not less ~~((that))~~ than three properly spaced wrappers. If the logs have different lengths, they must be secured so that the longer logs are on the bottom, and each log is secured by not less than two properly spaced wrappers.

(iv) For loads consisting of five or more logs, when the logs are all 17 feet or less in length, ~~((shall))~~ they must be secured by not less than two properly spaced wrappers. Loads consisting of five or more logs, when any log is over 17 feet in length, ~~((shall))~~ must be secured by not less than three properly spaced wrappers.

(b) ~~((Placement and number of wrappers required))~~ On log trucks using chock blocks(-):

(i) ~~((In the hauling of))~~ For one log loads, one wrapper chain or cable ~~((shall))~~ will be required and secured to the rear bunk and the log ~~((shall))~~ must be properly blocked in a manner to prevent it from rolling or shifting.

(ii) One additional wrapper chain or cable ~~((shall))~~ will be required on log trucks using chock blocks over and above the requirements in ~~((subdivisions))~~ (a)(iii) and (iv) of this ~~((section))~~ subsection, and logs must be properly blocked in a manner to prevent them from rolling or shifting.

(c) ~~((Placement and number of wrappers required on crosswise loaded trucks, trailers, etc.))~~ In the case of short logs loaded crosswise, the following method of securing the load ~~((shall))~~ must be used if the truck trailer is not provided with solid ends of a height sufficient to prevent any log in the load from rolling off:

(i) Not less than two chock blocks ~~((shall))~~ must be used at each open end of the vehicle and the load ~~((shall))~~ must be held with at least two wrapper chains or cables. The wrappers ~~((shall))~~ must be firmly attached to the end of the truck or trailer.

(ii) Rigid standards or stakes may be used in lieu of chock blocks but each such standard or stake ~~((shall))~~ must be either rigidly connected to the bed of the truck or trailer or ~~((shall))~~ must be placed in a tight fitting socket at least 12 inches in depth. ~~((Other means furnishing equivalent security may be acceptable.))~~

(d) ~~((Wrapper placement.))~~ When two wrappers are required, they ~~((shall))~~ must be applied within six feet of the front and rear bunks. When more than two wrappers are required, the front and back ~~((binder shall))~~ tiedowns must be applied within six feet of the front and rear bunks.

(e) ~~((Short logs.))~~ To properly secure short logs, ~~((binders shall))~~ tiedowns must be placed near the end, not less than 12 inches from the end of the log.

(f) ~~((Log on top or in outside saddle.))~~ No log loaded on top or in outside saddles of a load ~~((shall))~~ will be transported unless secured by not less than two wrapper chains or cables,

one of which ~~((shall))~~ must be placed near each end of such log.

(g) ~~((Fasten in place.))~~ All wrappers and ~~((binders shall))~~ tie-downs must be fastened in place prior to tightening to prevent the displacement of logs on the top of the load.

(h) ~~((Surround load.))~~ All wrapper chains or cables, except in the case of one log loads, ~~((shall))~~ must entirely surround the load. This does not apply to gut-wrappers.

(i) ~~((Gut wrappers.))~~ Gut-wrappers, when used, ~~((shall))~~ will be adjusted so as to be tightened by, but not carry the weight of the logs above them.

(j) ~~((Wrappers and binders to be placed before leaving immediate loading area.))~~ Wrappers and ~~((binders shall))~~ tie-downs must be placed and tightened around the completed load before the truck leaves the immediate loading area.

(k) ~~((Construction of wrappers and binders.))~~ Wrapper chains or cables, ~~((binders))~~ tie-downs, fasteners, or attachments thereof, used for any purpose as required by these standards, ~~((shall))~~ must have a minimum breaking strength of not less than 15,000 pounds and ~~((shall))~~ must be rigged so that it can be safely released.

(l) ~~((Bundle straps or banding.))~~ For the purposes of this standard, applied bundle straps or banding are not acceptable as wrappers and ~~((binders))~~ tie-downs.

(m) ~~((Loose ends secured.))~~ All loose ends of wrapper chains or cables ~~((shall))~~ must be securely fastened so as to prevent their swinging free in a manner that will create a hazard.

(n) ~~((Trucks in sorting yards.))~~ Trucks and trailers used around sorting yards, etc., which travel ~~((as at))~~ at slow speeds, will not be required to use wrappers providing all logs are contained by and lie below the height of the stakes and there are no persons on the ground exposed to such traffic.

(o) ~~((Binder hook design. Binders))~~ Tie-downs for securing wrappers on logging trucks ~~((shall))~~ must be fitted with hooks of proper size and design for the wrapper chain being used.

(p) ~~((Defective wrappers.))~~ Wrappers ~~((shall))~~ must be removed from service when any of the following conditions exist:

- (i) Excessively worn links on chains;
- (ii) Deformed or stretched chain links;
- (iii) Cracked chain links;
- (iv) Frayed, stranded, knotted, or otherwise defective wire rope.

(q) ~~((Binder extensions.))~~ Pipe extension handles (swedes) for tightening or securing ~~((binders shall))~~ tie-downs must be limited to not longer than 36 inches. ~~((Care shall be taken that))~~ A sufficient amount of the pipe must extend ~~((s))~~ over the ~~((binder))~~ tie-down handle.

(r) ~~((Defective binders.))~~ Defective ~~((binders shall))~~ tie-downs must be immediately removed from service.

(Note: See Figures I and II [codified as WAC 204-44-02001] for illustrations of placement and number of wrappers.

~~(2) Any motor truck, truck tractor, trailer, semi-trailer, or any combination thereof, transporting any load other than logs, upon a public highway where binder devices are required, shall have the load thereon securely fastened and protected by at least two load binders sufficiently strong to~~

~~withstand all possible strains. The load securing devices shall have a breaking strength of at least 15,000 pounds. Exception: Binders used to secure baled hay and baled straw shall have a breaking strength of not less than 9,000 pounds.)~~

~~(2) For illustrations of placement and number of wrappers, see Figures 25 through 35 under WAC 296-54-58950.~~

AMENDATORY SECTION (Amending WSR 93-11-017, filed 5/6/93, effective 6/6/93)

WAC 204-44-040 Securing pole trailers while in transit. Any empty pole trailer loaded upon any truck-tractor (except pole trailers that straddle the truck-tractor bunks) ~~((shall))~~ must be fastened to the truck-tractor by not less than one 5/16" grade seven or better chain and one tensioning or locking device in such a manner as to prevent it from falling or shifting while in transit. The chain ~~((shall))~~ must be securely fastened between the forward point on the reach tunnel and a point on the truck-tractor frame or from either axle of the pole trailer to a point directly below the truck-tractor frame or crossmember.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 204-44-02001 Diagrams I and II—Placement and number of wrappers.

WAC 204-44-030 Approval of load fastening devices.

WSR 15-19-104

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed September 18, 2015, 8:28 a.m., effective October 19, 2015]

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

Purpose: With the passage of ESSB 5158 there is a need to adopt rules to provide clarification regarding timelines and formatting for reporting to the patrol.

Statutory Authority for Adoption: Section 1, chapter 190, Laws of 2015.

Adopted under notice filed as WSR 15-15-127 on July 17, 2015.

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 2, 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 2, 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: September 15, 2015.

John R. Batiste
Chief

Chapter 446-90 WAC

EMERGENCY TELECOMMUNICATIONS DATA BASE

NEW SECTION

WAC 446-90-010 Wireless telecommunication provider emergency contact information. (1) For the purpose of RCW 80.36.XXX (section 1, chapter 190, Laws of 2015) the following definitions will apply:

(a) "Emergency contact information" means a phone number at which an employee of a wireless telecommunications provider registered to do business in the state of Washington or a reseller of wireless telecommunications services is available twenty-four hours a day, seven days a week to provide information in its possession concerning the current or most recent location of a telecommunications device and call information of a user of the device when requested by law enforcement.

(b) "Immediately" means that updates must be provided to the Washington state patrol district 1 communications (Tacoma) within one hour of any contact information change.

(2) Emergency contact information required under RCW 80.36.XXX (section 1, chapter 190, Laws of 2015) must be provided to the Washington state patrol via e-mail to: g-d-1commsupervisors@wsp.wa.gov.

NEW SECTION

WAC 446-90-020 Address confidentiality program name information. The secretary of state will provide an updated PDF format list of names to the Washington state patrol on a daily basis, during normal office hours. The list will distinguish between those participants requesting disclosure and those who request nondisclosure to a law enforcement agency of the location of a telecommunications device and call information of the user as prescribed in RCW 40.24.070 by the addition of one column which will indicate a Y for disclosure or an N for nondisclosure.

WSR 15-19-105

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed September 18, 2015, 8:31 a.m., effective October 19, 2015]

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

Purpose: With the passage of SB 5207 during the 2015 legislative session, the Washington state patrol is in need of updating its rules with regard to the office hours for registered tow truck operators.

Citation of Existing Rules Affected by this Order: Amending WAC 204-91A-120.

Statutory Authority for Adoption: RCW 46.55.115.

Adopted under notice filed as WSR 15-15-126 on July 17, 2015.

Changes Other than Editing from Proposed to Adopted Version: Additional changes were made to revert back to the original language discussed with industry with some additional amendments. These changes require that tow companies designate an hour for their break but allow for the hour to be changed the same day if there is an emergent business need, customer transaction or inspection. Amendments also clarify when charges may be resumed and that electronic notification may be made to the inspector.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@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 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 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: September 17, 2015.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-120 Business office hours and records. (1) Business hours ~~((for purposes of inspection of records, place of business, and towing equipment must be 8 a.m. to 5 p.m., excluding weekends and state recognized holidays))~~ will be in accordance with RCW 46.55.060(6). Businesses that close for an hour between 11:00 a.m. and 1:00 p.m. must:

(a) Designate the hour that they intend to use on a daily basis and notify the patrol of the designated hour annually at the time of inspection. The designated hour may be:

(i) Changed by providing notice to the patrol at least seventy-two hours in advance. Electronic notification to the inspector will be considered an acceptable form of providing notice.

(ii) Adjusted the same day if a customer transaction occurs during the designated hour or an emergent business need arises provided that:

(A) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(B) The total amount of time the business office is closed does not exceed one hour; and

(C) Notice is provided:

(I) At the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(II) To the inspector electronically within twenty-four hours if adjusted for an emergent business need.

(b) Notify the public of the designated hour that they intend to be closed, which must be posted on the door with a telephone number at which personnel can be reached as required by RCW 46.55.060.

(c) Remain accessible to law enforcement or department of licensing if they are in the process of performing an inspection or investigation. Adjustments to the designated hour may be made if an investigation or inspection occurs during the designated hour provided that:

(i) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(ii) Notice is provided at the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(iii) The total amount of time the business office is closed does not exceed one hour.

(2) The owner/operator must have personnel at the place of business during business hours to answer phone calls and to release vehicles and personal property. Persons from adjoining or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours.

(3) When an operator is not open for business and does not have personnel present at the place of business, the operator must post a clearly visible telephone number at the business location to advise the public how to make contact for the release of vehicles or personal property.

(4) The owner/operator must maintain personnel who ~~(can be contacted)~~ must be:

(a) Available twenty-four hours a day to release impounded vehicles within a sixty-minute period of time. ~~((The personnel must be))~~ If personnel are contacted during the hour the business has designated to be closed under subsection (1) of this section, personnel must:

(i) Log the time of the call;

(ii) Return to the business within no more than one-half hour;

(iii) Calculate the storage fees based on the time of the call. If the owner or the owner's authorized representative does not redeem the vehicle at the time the operator returns to the business, the vehicle storage fees will accrue as if charges had not ceased at the time of the call.

(b) Identifiable as representing the company.

(5) All billing invoices must be numbered and must contain the following information:

(a) Date of service and tow truck operator's name.

(b) Time of departure in response to the call.

(c) Time service completed.

(d) Class of tow truck.

(e) If the towing call is for a Washington state patrol request, another police agency, a private impound, or the result of a private citizen request.

(f) All fees for service must be itemized.

(g) The date and time the vehicle was released.

(6) Yard cards containing the information in subsection (5) of this section may be used for internal control of vehicles by the operator until the vehicle is released, sold, or otherwise disposed of. Yard cards are supplemental to, and do not replace the invoice required above.

(7) A copy of the invoice must be filed by invoice number at the business location and a copy of any voided invoice must be retained in this same file. Another copy of the invoice must be included with the transaction file items identified in RCW 46.55.150.

WSR 15-19-121

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed September 21, 2015, 9:58 a.m., effective October 22, 2015]

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

Purpose: WAC 182-531A-0800 aligns the health care authority's provider requirements with those set by the behavior analyst certification board. All sections now contain corrected WAC references, clarified language and simplified rule structures.

Citation of Existing Rules Affected by this Order: Amending WAC 182-531A-0700, 182-531A-0800, 182-531A-0900, 182-531A-1000, and 182-531A-1200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-16-106 on August 4, 2015.

Changes Other than Editing from Proposed to Adopted Version: The agency added advanced registered nurse practitioner to the list of eligible providers of applied behavior analysis (ABA) services to WAC 182-531A-0800 (2), (3), and (7). The agency also added a reference to chapter 182-502 WAC to specify the types of disciplinary and eligibility criteria with which providers must comply to remain eligible [as] an eligible provider of ABA services.

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 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: September 21, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0700 Applied behavior analysis (ABA)—Stage three: Delivery of ABA services. (1) ~~((Applied behavioral analysis must be prior authorized))~~ A provider must obtain prior authorization (PA) before delivery of applied behavior analysis (ABA) services. To request PA, a provider must submit the following documents to the Medicaid agency:

(a) The comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan completed by the center of excellence (COE) described in this chapter;

(b) The ABA assessment and ABA therapy treatment plan described in this chapter; and

(c) ~~((Other))~~ Any documents required ((as described in)) by the agency's ABA provider guide.

(2) After the services are prior authorized, ~~((the ABA therapy treatment plan is implemented by))~~ the lead behavior analysis therapist (LBAT) or a therapy assistant (TA) implements the ABA therapy treatment plan in conjunction with other care team members. The LBAT is responsible for communicating and collaborating with other care team members to ensure ((consistency in)) consistent approaches to ((achieve)) achieving treatment goals.

(3) If services are rendered by a ~~((therapy assistant, the therapy assistant))~~ TA, he or she must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting ~~((found))~~ (for example, in the home, office, clinic, or community), or in the day services program;

(c) Be supervised directly by an LBAT for ~~((a minimum of))~~ at least five percent of total direct care per week ((e.g., one hour per twenty hours of care));

(d) Consult the LBAT ~~((when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated (see WAC 182-531-1426 for appropriate procedures and physical interventions and WAC 182-531-1428 for prohibited procedures and physical interventions);))~~ if:

(i) Considering modifying a technique;

(ii) A barrier or challenge prevents implementation of the treatment plan; and

(iii) Clinically indicated.

(e) Ensure family involvement through modeling, coaching, and training to support generalization and maintenance of achieved behaviors;

(f) ~~((Keep documentation of))~~ Document each visit with the client ((and family to include)) or family and include:

(i) Targeted behavior, interventions, response, modifications in techniques((-and a));

(ii) A plan for the next visit((-along with));

(iii) Behavior tracking sheets that record and graph data collected for each visit; and

~~((g) Maintain documentation of family's confirmation that the visit occurred, recording signature, and date.))~~ (iv) Confirmation that each visit has occurred, recording the parent's signature and the date.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) ~~((Stage one. The))~~ A center of ((excellence's (COE's))) excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team ((whether facility-based or practitioner-based.

~~(a) The qualifications for a COE are:~~

~~(i) The entity or individual employs:~~

~~(A))~~

~~(2) The COE must employ:~~

~~(a) A person ((or persons)) licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and ((has a specialty in one of the following:~~

~~(I) Neurology;~~

~~(II) Pediatric neurology;~~

~~(III) Developmental pediatrics;~~

~~(IV) Psychology;~~

~~(V) Pediatric psychiatry; or~~

~~(VI) Psychiatry; or~~

~~(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who has been trained by and works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection; or~~

~~(C) Another) is:~~

~~(i) An advanced registered nurse practitioner (ARNP);~~

~~(ii) A developmental pediatrician;~~

~~(iii) A neurologist;~~

~~(iv) A pediatric neurologist;~~

~~(v) A pediatric psychiatrist;~~

~~(vi) A psychiatrist; or~~

~~(vii) A psychologist; or~~

~~(b) A qualified medical provider who meets qualifications in ((a)(ii)) subsection (3) of this ((subsection)) section and who has been designated by the agency as a ((center of excellence by the agency)) COE.~~

~~((ii) The entity or individual has been))~~ (3) The COE must be prequalified by the agency as meeting or employing ((persons meeting)) people who meet the following criteria:

~~((A))~~ (a) ARNPs, physicians, and psychologists must have demonstrated expertise ((to diagnose)) in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool ((or confirm));

(ii) Confirming the diagnosis by observing the client's behavior((-)) and interviewing family members((-)); or

(iii) Reviewing the documentation available from the client's primary care provider, ((the child's)) individualized education plan ((IEP)), or individualized family service plan ((IFSP); or

~~(B) Have sufficient experience in or knowledge of);~~

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA);

~~((C) Are)) and~~

~~(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and ((to)) develop a multidisciplinary clinical treatment plan ((as described in WAC 182-531-1418(2)), and~~

~~((iii) The entity or individual is)) under WAC 182-531A-0500(2).~~

~~(4) The COE must be enrolled with the agency or the client's ((MCO)) managed care organization, unless the client has third-party insurance.~~

~~((b)) (5) Examples of providers who can qualify ((and be paid for these services)) as a designated COE ((are)) include:~~

~~((i)) (a) Multidisciplinary clinics;~~

~~((ii)) (b) Individual qualified provider offices; and~~

~~((iii)) (c) Neurodevelopmental centers.~~

~~((2)) (6) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.~~

~~((a)) **Lead behavior analysis therapist ((LBAT)).**~~

~~((i) Requirements:~~

~~(A)) (7) The lead behavior analysis therapist (LBAT) must be:~~

~~((H)) (a) Licensed by the department of health (DOH) to practice independently as ((a)) an ARNP, physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW, ((in good standing with no license restrictions; or~~

~~((H)) and be an eligible provider according to chapter 182-502 WAC;~~

~~(b) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as ((a)) an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW ((in good standing with no license restrictions; or~~

~~((H)) and be an eligible provider according to chapter 182-502 WAC; or~~

~~(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.~~

~~((B)) (8) The LBAT must(=~~

~~(H)) enroll as a servicing provider ((and)), be authorized to supervise ancillary providers(= and~~

~~(H) Be)), and be:~~

~~(a) A board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB); or~~

~~((H) Have two hundred twenty-five hours of course work related to behavior analysis and either: Seven hundred fifty hours of supervision under a BCBA, or two years of practical experience designing and implementing compre-~~

~~hensive ABA therapy treatment plans. (a)(i)(B)(H) of this subsection is retroactive to January 1, 2013.~~

~~((i) Role.) (b) Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB.~~

~~(9) If the LBAT's role is filled by a BCaBA, the responsibilities below must be fulfilled by both the BCaBA and the supervising BCBA, as required by the BACB. The LBAT must:~~

~~((A)) (a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment ((being)) provided by other health care professionals, and that states how all treatment will be coordinated((= as applicable)); and~~

~~((B)) (b) Supervise ((a minimum of)) at least five percent of the total direct care provided by the therapy assistant per week ((e.g., one hour per twenty hours of care)).~~

~~((b)) **Therapy assistant. ((Requirements:**~~

~~(i) Therapy assistants)) (10) The therapy assistant (TA) must be:~~

~~((A)) (a) Able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; ((or~~

~~((B)) (b) Employed by or contracted with an agency ((that is)) enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~((C)) (c) Employed by or contracted with an agency ((that is)) enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;~~

~~((ii) The therapy assistant must:~~

~~(A) Have)) (11) The TA must enroll as a performing or servicing provider and have:~~

~~(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a ((child)) client with core symptoms of autism; and~~

~~((B) Have a written)) (b) A letter of attestation signed by the lead LBAT, documenting that the ((therapy assistant)) TA has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services ((prior to providing services without supervision to covered clients; and~~

~~(C) Enroll as a performing/servicing provider.~~

~~(iii) Role. The therapy assistant must:~~

~~(A))~~

~~(12) The TA must:~~

~~(a) Deliver services according to the ABA therapy treatment plan; and~~

~~((B))~~ (b) Be supervised by an LBAT who meets the requirements ~~((in (a)(i) of this subsection))~~ under subsection (7), (8), and (9) of this section; and

~~((C))~~ (c) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the ~~((child's))~~ client's needs. If changes are clinically indicated, they must be made by the LBAT.

~~((e) Licensure for facility-based day program setting. This applies to the model described in WAC 182-531-1420 (2)(a).))~~

Facility-based day program.

(13) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following licensure requirements:

(a) Outpatient hospital facilities ~~((providing these services))~~ must meet the applicable DOH licensure requirements~~((:))~~;

(b) A clinic or nonhospital-based facility ~~((providing these services))~~ must be licensed as a community mental health agency by DBHR~~((, as described in))~~ under chapter 388-877A WAC~~((:))~~;

(c) A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable~~((: other))~~; and

(d) Any provider~~((s))~~ serving as a member~~((s))~~ of the multidisciplinary care team must be licensed or certified under Title 18 RCW~~((, as required))~~.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services. (1) The medicaid agency covers only the following applied behavior analysis (ABA) services, delivered in settings described in ~~((stage two, as noted in WAC 182-531-1420 (1) and (2).))~~ WAC 182-531A-0600, for eligible clients:

(a) The ABA assessments ~~((to))~~ that determine the relationship between environmental events and the client's behaviors;

(b) The direct provision of ABA services by the therapy assistant (TA) or lead behavior analysis therapist (LBAT);

(c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;

(d) Up to four additional ABA assessments and revisions of the initial ABA therapy treatment plan per year, if necessary to meet client's needs~~((, limited to four per year))~~;

(e) Supervision of the ~~((therapy assistant))~~ TA;

(f) Training and evaluation of family members or caregivers to carry out the approved ABA therapy treatment plans;

(g) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and

(h) On-site assistance in ~~((a difficult or crisis situation))~~ the event of a crisis.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs ~~((and be consistent with the program rules in the Washington Administrative Code))~~:

~~((a))~~ (a) ~~((Speech and language therapy;~~

~~((b))~~ (b) ~~((Occupational therapy;~~

~~((c))~~ (c) ~~((Physical therapy;~~

~~((d))~~ (d) ~~((Counseling;~~

~~((e))~~ (e) ~~((Interpreter services;~~

~~((f))~~ (f) ~~((Dietician services))~~ Counseling;

~~((g))~~ (g) ~~((Dietician services;~~

~~((h))~~ (h) ~~((Interpreter services;~~

~~((i))~~ (i) ~~((Occupational therapy;~~

~~((j))~~ (j) ~~((Physical therapy;~~

~~((k))~~ (k) ~~((Speech and language therapy;~~ and

~~((l))~~ (l) ~~((Transportation services.~~

(3) The agency does not authorize payment of ABA services ~~((if the services are duplicative of services being rendered))~~ that duplicate services provided in another setting.

(4) ~~((Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.))~~ If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-1000 Applied behavior analysis (ABA)—Noncovered services. The medicaid agency does not cover ~~((the following))~~ certain services under the applied behavior analysis (ABA) program ~~((including, but))~~ include, but are not limited to:

(1) Autism camps;

(2) Dolphin therapy;

(3) Equine therapy~~((/))~~ or hippo therapy;

(4) Primarily educational services;

(5) Recreational therapy;

(6) Respite care;

(7) Safety monitoring services;

(8) School-based health care services or early intervention program-based services under WAC 182-531A-0600 (3)(b)(iii), unless prior authorized ~~((and as described in WAC 182-531-1420 (2)(b)(iii))~~);

(9) Vocational rehabilitation;

(10) Life coaching; and

(11) Treatment that is unproven or investigational ~~((e.g.))~~ for example, holding therapy, Higashi (day life therapy), auditory integration therapy).

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine. Telemedicine, as defined in ~~((WAC 182-531-1730))~~ chapter 182-531 WAC, may be used to provide the following authorized services:

(1) Program supervision when the client is present; and

(2) Family training, which does not require the client's presence.

WSR 15-19-122
PERMANENT RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed September 21, 2015, 9:59 a.m., effective October 22, 2015]

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

Purpose: This rule reflects state requirements that hospitals and health care providers attending births inform parents of required newborn screening tests and prophylactic eye ointment. The rule requires that these providers inform parents of the risks and benefits of vitamin K injection, and appropriately document parent refusal of services. Language is also revised to improve readability and replace outdated references to "MAA."

Citation of Existing Rules Affected by this Order: Amending WAC 182-533-0600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 70.83.020; SHB 1285, chapter 37, Laws of 2015, 64th Legislature 2015; WAC 246-100-202.

Adopted under notice filed as WSR 15-16-002 on July 23, 2015.

Changes Other than Editing from Proposed to Adopted Version: In response to written comments received, the agency added a provision that parents may refuse services under RCW 70.83.020, and a requirement that providers appropriately document parent refusal.

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

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

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

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

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

Date Adopted: September 21, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0600 Planned home births and births in birthing centers. (1) ~~((MAA))~~ **Client eligibility.** The medicaid agency covers planned home births and births in

birthing centers for ~~((its))~~ clients ~~((when the client and the maternity care provider))~~ who choose to ~~((have a home birth or to))~~ give birth at home or in an ~~((MAA))~~ agency-approved birthing center and ~~((the client))~~:

(a) ~~((Is))~~ Are eligible for ~~((CN or MN))~~ the alternative benefit package under WAC 182-501-0060, categorically needy or medically needy scope of care ~~((see WAC 388-533-400(2)))~~ under WAC 182-533-0400(2);

(b) ~~((Has a MAA approved))~~ Have an agency-approved medical provider who has accepted responsibility for the planned home birth or birth in birthing center ~~((as provided in))~~ under this section;

(c) ~~((Is))~~ Are expected to deliver the child vaginally and without complication (i.e., with a low risk of adverse birth outcome); and

(d) ~~((Passes MAA's))~~ Pass the agency's risk screening criteria. ~~((MAA))~~ The agency provides these risk-screening criteria to qualified medical services providers.

(2) ~~((MAA approves))~~ **Qualified providers.** Only the following provider types ~~((to provide MAA covered))~~ may be reimbursed for planned home births and births in birthing centers:

(a) Physicians licensed under chapters 18.57 or 18.71 RCW;

(b) Nurse midwives licensed under chapter 18.79 RCW; and

(c) Midwives licensed under chapter 18.50 RCW.

(3) **Birthing center requirements.**

(a) Each participating birthing center must:

~~((a))~~ (i) Be licensed as a childbirth center by the department of health (DOH) under chapter 246-349 WAC;

~~((b))~~ (ii) Be specifically approved by ~~((MAA))~~ the agency to provide birthing center services;

~~((c))~~ (iii) Have a valid core provider agreement with ~~((MAA))~~ the agency; and

~~((d))~~ (iv) Maintain standards of care required by DOH for licensure.

~~((4 MAA))~~ (b) The agency suspends or terminates the core provider agreement of a birthing center if it fails to maintain DOH standards cited in ~~((subsection (3)))~~ (a) of this ~~((section))~~ subsection.

~~((5))~~ (4) **Home birth or birthing center providers.** Home birth or birthing center providers must:

(a) Obtain from the client a signed consent form in advance of the birth;

(b) Follow ~~((MAA's))~~ the agency's risk screening criteria and consult with ~~((and/))~~, or refer the client or newborn to, a physician or hospital when medically appropriate;

(c) Have current, written, and appropriate plans for consultation, emergency transfer and transport of a client ~~((and/))~~ or newborn to a hospital;

(d) Make appropriate referral of the newborn for pediatric care and medically necessary follow-up care;

(e) Inform parents of ~~((the benefits of a))~~ required prophylactic eye ointment and newborn screening tests ~~((and offer to))~~ for heritable or metabolic disorders, and congenital heart defects, and send the newborn's blood sample to the ~~((department of health))~~ DOH for testing ~~((; and~~

~~(f)~~ Parents may refuse these services for religious reasons under RCW 70.83.020. The provider must obtain the signature from the parent(s) on:

(i) The reverse side of the screening card to document refusal of screenings for heritable or metabolic disorders; and

(ii) A waiver form to document refusal of prophylactic eye ointment or a screening for congenital heart defects;

~~(f)~~ Inform parents of the benefits and risks of Vitamin K injections for newborns; and

(g) Have evidence of current cardiopulmonary resuscitation (CPR) training for:

(i) Adult CPR; and

(ii) Neonatal resuscitation.

~~((6))~~ **(5) Planned home birth providers.** Planned home birth providers must:

(a) Provide medically necessary equipment, supplies, and medications for each client;

(b) Have arrangements for twenty-four hour per day coverage;

(c) Have documentation of contact with local area emergency medical services to determine the level of response capability in the area; and

(d) Participate in a formal, state-sanctioned, quality assurance~~(f)~~ improvement program or professional liability review process (~~(e.g., Joint Underwriting Association (JUA), Midwives Association of Washington State (MAWS), etc.)~~).

~~((7)MAA)~~ **(6) Limitations.** The agency does not cover planned home births or births in birthing centers for women identified with any of the following conditions:

(a) Previous cesarean section;

(b) Current alcohol ~~(and)~~ or drug addiction or abuse;

(c) Significant hematological disorders~~(f)~~ or coagulopathies;

(d) History of deep venous ~~(thromboses)~~ thrombosis or pulmonary embolism;

(e) Cardiovascular disease causing functional impairment;

(f) Chronic hypertension;

(g) Significant endocrine disorders including preexisting diabetes (type I or type II);

(h) Hepatic disorders including uncontrolled intrahepatic cholestasis of pregnancy ~~(and)~~ or abnormal liver function tests;

(i) Isoimmunization, including evidence of Rh sensitization~~(f)~~ or platelet sensitization;

(j) Neurologic disorders or active seizure disorders;

(k) Pulmonary disease;

(l) Renal disease;

(m) Collagen-vascular diseases;

(n) Current severe psychiatric illness;

(o) Cancer affecting ~~(site of delivery)~~ the female reproductive system;

(p) ~~(Known)~~ Multiple gestation;

(q) ~~(Known)~~ Breech presentation in labor with delivery not imminent; or

(r) Other significant deviations from normal as assessed by the provider.

WSR 15-19-130
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 21, 2015, 10:44 a.m., effective October 22, 2015]

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

Purpose: This rule making is a result of a stakeholder petition for rule making to clarify RCW 66.28.170 regarding discrimination in price to purchaser for resale prohibited. Confusion in the alcohol industry regarding "volume discounts" since the passing of Initiative 1183 requires further clarification in the rules.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 15-15-096 on July 15, 2015.

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 6, 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: September 9, 2015.

Jane Rushford
Chairman

NEW SECTION

WAC 314-23-060 What are "volume discounts"?

Volume discounts are discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or supplier. However, the limitations on interactions between the levels of licenses remain including, but not limited to, the prohibition on undue influence and sales below cost.

NEW SECTION

WAC 314-23-065 What are "unfair trade practices"?

(1) "Unfair trade practice" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as, but not limited to, the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this subsection;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that the product is not offered to all retailers in the local market at the same price.

(2) The exercise of undue influence is an unfair trade practice and is prohibited.

NEW SECTION

WAC 314-23-070 What is "local market"? Local market is limited to businesses in geographic recognized market areas such as town, city, county or other recognized geographic area in which distribution services are provided. For the purposes of differential pricing, sales to on-premises retailers and off-premises retailers constitute separate markets.

NEW SECTION

WAC 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these? (1) It is unlawful for a distributor or other supplier of spirits or wine to offer a lower price to an on-premises or off-premises retailer if the retailer is required to purchase a specific portion of some or all of its wine or spirits from that distributor or supplier in order to qualify for the lower price. Such requirements include, but are not necessarily limited to, agreeing to devote certain percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these or other types of purchases to products sold by that distributor or supplier.

(2) Such exclusive discounts are prohibited under RCW 66.28.170 and federal law 27 C.F.R. 6.72.

NEW SECTION

WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? (1) Yes, distributors or other licensed suppliers are allowed to provide volume discounts to licensed on-premises and off-premises retailers. The discounts must be based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or other licensed suppliers. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost of acquisition.

(2) Differential pricing between on-premises licensed retailers and off-premises licensed retailers is allowed under the following exceptions:

(a) For spirits: A new product to the market may be sold to on-premises retailers at an "introductory price" for a maximum of six months. After the six-month introductory period the price for on-premises and off-premises retailers must be the same price for the same volume purchased.

(i) "New product" means the product has not previously been offered for sale to retailers.

(ii) "Introductory price" means the price of the spirits product when it first becomes available for purchase.

(b) For wine: Wine may be sold to on-premises retailers and off-premises retailers at different prices.

NEW SECTION

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

(2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment or single invoice.

(3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

**WSR 15-19-139
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed September 22, 2015, 9:51 a.m., effective October 23, 2015]

Effective Date of Rule: October 23, 2015.

Purpose: In 2013, the American Psychiatric Association released the *Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. The department of

labor and industries is amending rules in order to aid in the implementation and consistent use of new *DSM* versions within Washington state's workers' compensation program.

The purpose of this rule making is limited to changes necessary to implement the *DSM-5* and include the following:

- Amending existing rules that refer to the *DSM-IV* or its required classification method (axis system) or its assessment instruments, and
- Clarifying how the *DSM-5* is implemented within Title 51 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 296-14-300, 296-20-330, and 296-21-270.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.08.142.

Adopted under notice filed as WSR 15-12-087 on June 2, 2015.

Changes Other than Editing from Proposed to Adopted Version: Clarifying language was added to the following WAC 296-14-300 and 296-21-270.

The department made clarifying changes to two of the three WAC proposed in the CR-102 in response to public comments. These comments made it clear to the department that stakeholders may not have understood the intent of some of the proposed language. Clarifying changes were made so that the intent of the new language is now clear. The rule language changes proposed in the CR-102 filing are shown in black (i.e., additions underlined, deletions struck through). The clarifying changes made in response to public comments are shown in red.

WAC 296-14-300 Mental condition/mental disabilities

(1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)(a) Stress resulting from ~~extreme~~ exposure to a single traumatic event will be adjudicated (~~(with reference to)~~) as an industrial injury. See RCW 51.08.100.

(b) Examples of extreme single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways

(i) Directly experiencing the traumatic event;
(ii) Witnessing, in person, the event as it occurred to others; or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to aversive details of traumatic events, none of which rises to the level of extreme exposure are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW ~~51.08.140 and 51.08.142~~). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) ~~Claims based on mental~~ Mental conditions or mental disabilities that specify pain primarily as a psychiatric condition symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not industrial injuries (see RCW 51.08.100) or occupational diseases (see RCW ~~51.08.140 and 51.08.142~~); are not clinically related to occupational exposure.

WAC 296-21-270 ((Psychiatric)) Mental health services.

(1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for psychiatric mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. ((Psychiatric)) Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, doctoral level clinical ((PhD)) psychologists (e.g., PhD and PsyD), and psychiatric advanced registered nurse practitioners and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "((psychiatric)) mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, and psychiatrists.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff or the self-insurer, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan ((are)) is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the sixty-day narrative reports are to

be sent to the department or self-insurer and to the attending provider.

(5)(a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. ~~((Use of))~~ Explanation of the numerical scales is required.

(b) Providers must use the ~~((current))~~ edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association ~~((axis format))~~ designated by the department in the initial evaluation, follow-up evaluations and sixty-day narrative reports~~((, and explanation of the numerical scales are required)).~~

(c) A report to the department or self-insurer will contain, at least, the following elements:

(i) Subjective complaints;

(ii) Objective observations;

(iii) Identification and measurement of target symptoms and functional status;

(iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and

(v) Plan of care.

(6) The codes, reimbursement levels, and other policies for ~~((psychiatric))~~ mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed functional assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: September 22, 2015.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 88-14-011, filed 6/24/88)

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

(a) Change of employment duties;

(b) Conflicts with a supervisor;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment;

(k) Personnel decisions;

(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)(a) Stress resulting from exposure to a single traumatic event will be adjudicated ~~((with reference to))~~ as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others; or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

AMENDATORY SECTION (Amending Order 74-32, filed 6/21/74, effective 10/1/74)

WAC 296-20-330 Impairments of mental health.
 ((H)) Rules for evaluation of permanent impairment of mental health:

((a)) (1) Mental illness means malfunction of the psychic apparatus that significantly interferes with ordinary living.

((b)) (2) Each person has a pattern of adjustment to life. The pattern of adjustment before the industrial injury or occupational disease serves as a base line for all assessments of whether there has been a permanent impairment due to the industrial injury or occupational disease.

((c)) (3) To determine the preinjury pattern of adjustment, all evaluations of mental health shall contain a complete preinjury history including, but not necessarily limited to: Family background and the relationships with parents or other nurturing figures; extent of education and reaction to it; military experience, if any; problems with civil authorities; any history of prolonged illness, and difficulty with recovery; any history of drug abuse or alcoholism; employment history, the extent of and reaction to responsibility, and relationships with others at work; capacity to make and retain friends; relationships with spouses and children; nature of daily activities, including recreation and hobbies; and lastly, some summary statement about the sources of the patient's self-esteem and sense of identity. Both strengths and vulnerabilities of the person shall be included.

((d)) (4) Differences in adjustment patterns before and after the industrial injury or occupational disease shall be described, and the report shall contain the examining physician's opinion as to whether any differences:

((1)) (a) Are the result of the industrial injury or occupational disease and its sequelae, in the sense they would not have occurred had there not been the industrial injury or occupational disease;

((2)) (b) Are permanent or temporary;

((3)) (c) Are more than the normal, self-correcting and expectable response to the stress of the industrial injury or occupational disease;

((4)) (d) Constitute an impairment psychosocially or physiologically; and

((5)) (e) Are susceptible to treatment, and, if so, what kind. The presence of any unrelated or coincidental mental impairment shall always be mentioned.

((e)) (5) All reports of mental health evaluations shall use the diagnostic terminology listed in the edition of the Diagnostic and Statistical Manual of Mental Disorders ~~((of the American Psychiatric Association))~~ (DSM) designated by the department.

((f)) (6) No classification of impairment shall be made for complaints where the quality of daily life does not differ substantially from the preinjury pattern. A patient not currently employed may not engage in the same activities as when working, but the level and variety of his activities and zest for them shall distinguish the purely situational difference from cases of regression and withdrawal. In cases where some loss of use of body member is claimed, no category or impairment shall be assigned unless there are objective find-

ings of physiologic regression or consistent evidence of altered adaptability.

((g)) (7) The physician shall identify the ~~((schizoid, antisocial, inadequate, sociopathic, passive, hysterical, paranoid, or dependent personality types))~~ personality disorders as defined in the edition of the DSM designated by the department. Patients with these longstanding character disorders may show problem behavior that seems more related to current stress than it is, sometimes unconsciously insinuating themselves into difficult situations of which they then complain. Emotional reactions to an injury and subsequent events must be carefully evaluated in these patients. It must be medically probable that such reactions are permanent before a category of impairment can be attributed to the injury; temporary reactions or preexisting psychopathology must be differentiated.

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

WAC 296-21-270 ((Psychiatric)) Mental health services. (1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for ~~((psychiatric))~~ mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. ~~((Psychiatric))~~ Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, ~~((clinical PhD))~~ doctoral level psychologists~~((s))~~ and psychiatric advanced registered nurse practitioners and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "~~((psychiatric))~~ mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, and psychiatrists.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff or the self-insurer, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan ~~((are))~~ is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the sixty-day narrative reports are to be sent to the department or self-insurer and to the attending provider.

(5)(a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. ~~((Use of))~~ Explanation of the numerical scales is required.

(b) Providers must use the ~~((current))~~ edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association ~~((axis format))~~ designated by the department in the initial evaluation, follow-up evalua-

tions and sixty-day narrative reports(~~(-and explanation of the numerical scales are required)~~).

(c) A report to the department or self-insurer will contain, at least, the following elements:

- (i) Subjective complaints;
- (ii) Objective observations;
- (iii) Identification and measurement of target symptoms and functional status;

(iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and

(v) Plan of care.

(6) The codes, reimbursement levels, and other policies for (~~(psychiatric)~~) mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed functional assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

WSR 15-19-145
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 22, 2015, 2:02 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: WAC 246-808-990 Chiropractic fees and renewal cycle, the amended rule reduces initial license and renewal fees for chiropractors. The new fee levels are expected to align licensing revenue with costs of administering the chiropractic profession over time. The amended rule also clarifies when the University of Washington online resource library (HEAL-WA) surcharge is required and makes other clarifications.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 43.70.280.

Adopted under notice filed as WSR 15-13-087 on June 15, 2015.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 21, 2015.

John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 13-23-040, filed 11/15/13, effective 1/1/14)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for chiropractic licensure:

Title of Fee	Fee
<u>Original application</u>	
Application(((full examination or reexamination)))	\$ ((530.00)) <u>380.00</u>
Jurisprudence examination	<u>100.00</u>
UW online access fee (HEAL-WA)	<u>16.00</u>
<u>Temporary practice permit</u>	
(Temporary permit application)	205.00
Temporary practice permit	105.00
90-day permit	<u>105.00</u>
<u>Preceptorship - Initial and renewal</u>	
	((155.00)) <u>155.00</u>
<u>Active license renewal</u>	
<u>Renewal</u>	((482.00)) <u>432.00</u>
Late renewal penalty	((302.00)) <u>216.00</u>
Expired ((active)) license reissuance	302.00
UW online access fee (HEAL-WA)	<u>16.00</u>
<u>Inactive license renewal</u>	
<u>Renewal</u>	257.00
Expired ((inactive)) license reissuance	157.00
<u>Duplicate license</u>	
	((30.00)) <u>30.00</u>
<u>Certification of license</u>	
	((30.00)) <u>30.00</u>
((UW online access fee (HEAL-WA)))	16.00

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	47.00
Original registration	47.00
Renewal	62.00
Late renewal penalty	62.00

Title of Fee	Fee
Expired registration reissuance	62.00
Duplicate registration	30.00
Certification of registration	30.00

WSR 15-19-149
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 22, 2015, 2:32 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Title 246 WAC, the adopted rules reduce fees for multiple health care providers, add the University of Washington Health Sciences Library (HEAL-WA) fee for two credentials, amend the number of times licensed counselor associate credentials may be renewed, and add certain late renewal penalties.

The department of health (department) adopted changes to the fee rules of the professions in Table 1 that include:

- Reduction of application, active license renewal, and active renewal late penalty fees because the licensing fees were generating more revenue than is needed to cover the full cost of administering these licensing programs;
- Clarification of which categories of fees require payment of the HEAL-WA surcharge to make it easier for licensees to identify the fees they will be required to pay;
- Changes in formatting to make it easier for licensees to identify the fees they will be required to pay. This requires additional amendments in the proposed language to create headings and move fee categories under the proper headings.
- Restructuring of physical therapy fees so that physical therapy assistants do not pay more than physical therapists. The physical therapist assistants are currently paying higher fees than physical therapists, so the department adopted reduced fees to spread them more fairly across the two physical therapy credentials.

Table 1

WAC	WAC Title/ Profession	Statutory Authority
246-916-990	Athletic trainer fees and renewal cycle	RCW 43.70.280
246-822-990	Dietitian and nutritionist fees and renewal cycle	RCW 43.70.280

WAC	WAC Title/ Profession	Statutory Authority
246-809-990	Licensed counselor, and associate - fees and renewal cycle Includes:* <ul style="list-style-type: none"> • Licensed mental health counselor • Licensed mental health counselor associate • Licensed advanced social worker • Licensed advanced social worker associate • Licensed independent clinical social worker • Licensed independent clinical social worker associate • Licensed marriage and family therapist (clarifying changes only) • Licensed marriage and family therapist associate (adding HEAL-WA fees and clarifying changes only) 	RCW 43.70.110, 43.70.280, and 18.225.145
246-847-990	Occupational therapy fees and renewal cycle Includes: <ul style="list-style-type: none"> • Occupational therapist • Occupational therapy assistant 	RCW 43.70.280
246-851-990	Optometry fees and renewal cycle	RCW 43.70.280
246-850-990	Orthotist and prosthetist fees Includes: <ul style="list-style-type: none"> • Orthotist • Prosthetist 	RCW 43.70.280 and 18.130.250
246-915-990	Physical therapy fees and renewal cycle	RCW 43.70.280
246-915-99005	Physical therapist assistant fees and renewal cycle	RCW 43.70.280

WAC	WAC Title/ Profession	Statutory Authority
246-924-990	Psychology fees and renewal cycle	RCW 43.70.110 and 43.70.280
246-928-990	Respiratory care fees and renewal cycle	RCW 43.70.280

*Licensed marriage and family therapist and licensed marriage and family therapist associate credentials are not included in this fee reduction proposal because this program does not have a surplus. The changes included in this rule package for these professions are addition[s] of the HEAL-WA surcharge and formatting.

In addition, the department adopted amendments to WAC 246-809-990 to add the University of Washington (HEAL-WA) surcharge to the marriage and family therapist associate and independent clinical social worker associate credentials to implement; amend the number of times a marriage and family therapist associate, mental health counselor associate, advanced social worker associate, and independent clinical social worker associate license may be renewed from four to six times to implement chapter 73, Laws of 2013; and add late renewal penalties for the psychologist retired active and optometrist inactive renewals to make these professions' fees consistent with other professions per RCW 43.70.280 (1).

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: See Purpose above.

Adopted under notice filed as WSR 15-14-072 on June 26, 2015.

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 10, 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 10, Repealed 0.

Date Adopted: September 22, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-24-097, filed 12/3/13, effective 2/1/14)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than ~~((four))~~ six times.

((Title	Fee
(3) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$150.00
Initial license	75.00
Renewal	140.00
Renewal retired active	70.00
Late renewal penalty	70.00
Late renewal retired active	35.00
Expired license reissuance	85.00
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00
(4) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	140.00
Initial license	125.00
Renewal	138.00
Renewal retired active	70.00
Late renewal penalty	60.00
Late renewal retired active	35.00
Expired license reissuance	65.00
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00
(5) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	125.00
Initial license	125.00
Renewal	126.00
Renewal retired active	65.00
Late renewal penalty	63.00
Late renewal retired active	30.00
Expired license reissuance	72.50
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00
(6) The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
Application	50.00
Renewal	40.00

(Title	Fee	<u>Title</u>	<u>Fee</u>
Late renewal penalty	40.00	<u>Application</u>	<u>50.00</u>
Expired license reissuance	40.00	<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Duplicate license	15.00	<u>Renewal</u>	
Certification of license	15.00	<u>Renewal</u>	<u>40.00</u>
(7) The following nonrefundable fees will be charged for licensed mental health counselor associates:		<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Application	50.00	<u>Late renewal penalty</u>	<u>40.00</u>
Renewal	40.00	<u>Expired license reissuance</u>	<u>40.00</u>
Late renewal penalty	40.00	<u>Duplicate license</u>	<u>15.00</u>
Expired license reissuance	40.00	<u>Verification of license</u>	<u>15.00</u>
Duplicate license	15.00	<u>Licensed mental health counselor</u>	
Certification of license	15.00	<u>Original application</u>	
(8) The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:		<u>Application</u>	<u>95.00</u>
Application	50.00	<u>Initial license</u>	<u>80.00</u>
Renewal	40.00	<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Late renewal penalty	40.00	<u>Active license renewal</u>	
Expired license reissuance	40.00	<u>Renewal</u>	<u>90.00</u>
Duplicate license	15.00	<u>Late renewal penalty</u>	<u>50.00</u>
Certification of license	15.00))	<u>Expired license reissuance</u>	<u>65.00</u>
(3) The following nonrefundable fees will be charged:		<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Title</u>	<u>Fee</u>	<u>Retired active license renewal</u>	
<u>Licensed marriage and family therapist</u>		<u>Renewal retired active</u>	<u>70.00</u>
<u>Original application</u>		<u>Late renewal penalty</u>	<u>35.00</u>
<u>Application</u>	<u>\$150.00</u>	<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>License</u>	<u>75.00</u>	<u>Duplicate license</u>	<u>10.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>	<u>Verification of license</u>	<u>10.00</u>
<u>Active license renewal</u>		<u>Licensed mental health counselor associate</u>	
<u>Renewal</u>	<u>140.00</u>	<u>Original application</u>	
<u>Late renewal penalty</u>	<u>70.00</u>	<u>Application</u>	<u>35.00</u>
<u>Expired license reissuance</u>	<u>85.00</u>	<u>Renewal</u>	
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>	<u>Renewal</u>	<u>25.00</u>
<u>Retired active license renewal</u>		<u>Late renewal penalty</u>	<u>25.00</u>
<u>Renewal</u>	<u>70.00</u>	<u>Expired license reissuance</u>	<u>40.00</u>
<u>Late renewal penalty</u>	<u>35.00</u>	<u>Duplicate license</u>	<u>15.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>	<u>Verification of license</u>	<u>15.00</u>
<u>Duplicate license</u>	<u>10.00</u>	<u>Licensed advanced social worker and licensed independent clinical social worker</u>	
<u>Verification of license</u>	<u>10.00</u>	<u>Original application</u>	
<u>Licensed marriage and family therapy associate</u>		<u>Application</u>	<u>100.00</u>
<u>Original application</u>		<u>Initial license</u>	<u>100.00</u>
		<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
		<u>Active license renewal</u>	
		<u>Renewal</u>	<u>100.00</u>
		<u>Late renewal penalty</u>	<u>50.00</u>

<u>Title</u>	<u>Fee</u>
<u>Expired license reissuance</u>	<u>72.50</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Retired active license renewal</u>	
<u>Renewal retired active</u>	<u>65.00</u>
<u>Late renewal penalty</u>	<u>30.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Duplicate license</u>	<u>10.00</u>
<u>Verification of license</u>	<u>10.00</u>

Licensed advanced social worker associate and licensed independent clinical social worker associate

<u>Original application</u>	
<u>Application</u>	<u>35.00</u>
<u>UW online access fee (HEAL-WA)*</u>	<u>16.00</u>
<u>Renewal</u>	
<u>Renewal</u>	<u>25.00</u>
<u>Late renewal penalty</u>	<u>25.00</u>
<u>UW online access fee (HEAL-WA)*</u>	<u>16.00</u>
<u>Expired license reissuance</u>	<u>40.00</u>
<u>Duplicate license</u>	<u>15.00</u>
<u>Verification of license</u>	<u>15.00</u>

* Surcharge applies to independent clinical social worker associate only.

AMENDATORY SECTION (Amending WSR 13-21-077, filed 10/17/13, effective 1/1/14)

WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

<u>Title</u>	<u>Fee</u>
<u>Original application</u>	
<u>Application</u>	\$(100.00) <u>65.00</u>
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
<u>Renewal</u>	
<u>Renewal</u>	((70.00)) <u>45.00</u>
<u>HEAL-WA* surcharge</u> (Application and renewal)	16.00
<u>Late renewal penalty</u>	((50.00)) <u>45.00</u>
<u>Expired certificate reissuance</u>	<u>50.00</u>
<u>Duplicate certificate</u>	<u>30.00</u>

<u>Title</u>	<u>Fee</u>
<u>(Certification) Verification of certificate</u>	<u>30.00</u>
*HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.	

AMENDATORY SECTION (Amending WSR 13-21-077, filed 10/17/13, effective 1/1/14)

WAC 246-847-990 Occupational therapy fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for occupational therapist:

<u>(Title of Fee</u>	<u>Fee</u>
<u>Application and initial license fee</u>	<u>\$175.00</u>
<u>License renewal</u>	<u>145.00</u>
<u>HEAL-WA* surcharge - Initial license and renewal (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
<u>Limited permit fee</u>	<u>55.00</u>
<u>Late renewal fee</u>	<u>80.00</u>
<u>Expired license reissuance</u>	<u>80.00</u>
<u>Inactive license</u>	<u>15.00</u>
<u>Expired inactive license reissuance</u>	<u>15.00</u>
<u>Duplicate license</u>	<u>30.00</u>
<u>Certification of license</u>	<u>30.00</u>)

Title of Fee **Fee**

<u>Original application</u>	
<u>Application and initial license fee</u>	<u>\$150.00</u>
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
<u>Limited permit fee</u>	<u>55.00</u>
<u>Active license renewal</u>	
<u>License renewal</u>	<u>125.00</u>
<u>Late renewal fee</u>	<u>65.00</u>
<u>HEAL-WA* surcharge (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
<u>Expired license reissuance</u>	<u>80.00</u>
<u>Inactive license renewal</u>	
<u>Inactive license</u>	<u>15.00</u>
<u>Expired license reissuance</u>	<u>15.00</u>
<u>HEAL-WA* surcharge (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
<u>Duplicate license</u>	<u>30.00</u>
<u>Verification of license</u>	<u>30.00</u>

(3) The following nonrefundable fees will be charged for occupational therapy assistant:

(Title of Fee)	Fee
Application and initial license fee	175.00
License renewal	125.00
HEAL-WA* surcharge—Initial license and renewal (\$16.00 per year for two-year cycle)	32.00
Late renewal fee	70.00
Expired license reissuance	70.00
Inactive license	15.00
Expired inactive license reissuance	14.00
Limited permit fee	45.00
Duplicate license	30.00
Certification of license	30.00

<u>Title of Fee</u>	<u>Fee</u>
<u>Original application</u>	
<u>Application and initial license fee</u>	<u>\$150.00</u>
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
<u>Limited permit fee</u>	<u>45.00</u>
<u>Active license renewal</u>	
<u>License renewal</u>	<u>105.00</u>
<u>Late renewal fee</u>	<u>55.00</u>
<u>Expired license reissuance</u>	<u>70.00</u>
<u>HEAL-WA* surcharge (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
<u>Inactive license renewal</u>	
<u>Inactive license</u>	<u>15.00</u>
<u>Expired inactive license reissuance</u>	<u>14.00</u>
<u>HEAL-WA* surcharge (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
<u>Duplicate license</u>	<u>30.00</u>
<u>Verification of license</u>	<u>30.00</u>

*HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-850-990 Orthotic and prosthetic fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

<u>Title of Fee</u>	<u>Fee</u>
<u>Original application</u>	
((Orthotic)) Orthotist application	\$((395.00)) <u>265.00</u>

<u>Title of Fee</u>	<u>Fee</u>
((Prosthetic)) Prosthetist application	((395.00)) <u>265.00</u>
<u>Active renewal</u>	
((Orthotic)) Orthotist renewal	((190.00)) <u>125.00</u>
((Prosthetic)) Prosthetist renewal	((190.00)) <u>125.00</u>
Late renewal penalty fee	((190.00)) <u>65.00</u>
Expired credential reissuance fee	190.00
<u>Inactive renewal for orthotist or prosthetist</u>	
((Inactive credential)) Renewal fee	135.00
Late ((inactive)) renewal fee	((135.00)) <u>70.00</u>

<u>Retired active renewal for orthotist or prosthetist</u>	
((Retired active credential)) Renewal fee	135.00
Late ((retired active credential)) renewal fee	((135.00)) <u>70.00</u>
Duplicate credential	30.00
((Certification)) <u>Verification of credential</u>	30.00

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-851-990 Optometry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

<u>Title of Fee</u>	<u>Fee</u>
<u>Original application</u>	
Application	\$((175.00)) <u>130.00</u>
Out-of-state seminar	100.00
UW online access fee (HEAL-WA)	16.00
<u>Active license renewal</u>	
Renewal	((199.00)) <u>150.00</u>
Late renewal penalty	((100.00)) <u>75.00</u>
Expired license reissuance	75.00
UW online access fee (HEAL-WA)	16.00
<u>Inactive license renewal</u>	
Renewal	75.00
<u>Late renewal penalty</u>	<u>50.00</u>
UW online access fee (HEAL-WA)	16.00

Title of Fee	Fee
Retired active license renewal	
Renewal	94.00
Late renewal penalty	50.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	15.00
((Certification)) <u>Verification of license</u>	25.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-915-990 Physical therapy fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<u>Original application</u>	
Application	\$(400.00) <u>65.00</u>
<u>Active license renewal</u>	
License renewal	((75.00)) <u>50.00</u>
Late renewal penalty	50.00
<u>Expired license reissuance</u>	<u>50.00</u>
<u>Inactive license renewal</u>	
((Inactive)) <u>License renewal</u>	35.00
Expired ((inactive)) license reissuance	50.00
((Expired license reissuancee	50.00))
Duplicate license	15.00
((Certification)) <u>Verification of license</u>	25.00

AMENDATORY SECTION (Amending WSR 08-13-068, filed 6/13/08, effective 7/1/08)

WAC 246-915-99005 Physical therapist assistant fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to main-~~

~~tain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
<u>Original application</u>	
Application	\$(400.00) <u>60.00</u>
<u>Active license renewal</u>	
License renewal	((125.00)) <u>45.00</u>
Late renewal penalty	((62.50)) <u>45.00</u>
<u>Expired license reissuance</u>	<u>50.00</u>
<u>Inactive license renewal</u>	
((Inactive)) <u>License renewal</u>	((50.00)) <u>35.00</u>
Expired ((inactive)) license reissuance	((75.00)) <u>50.00</u>
((Expired license reissuancee	75.00))
Duplicate license	15.00
((Certification)) <u>Verification of license</u>	25.00

AMENDATORY SECTION (Amending WSR 08-13-066, filed 6/13/08, effective 7/1/08)

WAC 246-916-990 Athletic trainer fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<u>Original application</u>	
Application	\$(175.00) <u>115.00</u>
<u>Active license renewal</u>	
((License)) <u>Renewal</u>	((200.00)) <u>135.00</u>
Late renewal penalty	((100.00)) <u>70.00</u>
<u>Expired license reactivation</u>	<u>100.00</u>

Title of Fee	Fee
<u>Inactive license renewal</u>	
((Inactive license)) Renewal	40.00
((Expired license reactivation	400.00))
Expired ((inactive)) license reactivation	40.00
Duplicate license	15.00
Verification of license	25.00

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-924-990 Psychology fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<u>Original application</u>	
Application	\$(275.00) <u>190.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Active license renewal</u>	
Renewal	((300.00)) <u>210.00</u>
((Renewal retired active	405.00))
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Late renewal penalty	((155.00)) <u>105.00</u>
Expired license reissuance	155.00
<u>Retired active license renewal</u>	
Renewal	<u>105.00</u>
<u>Late renewal penalty</u>	<u>55.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Duplicate license	30.00
((Certification)) Verification of license	30.00
Amendment of certificate of qualification	35.00
((UW online access fee (HEAL-WA)	16.00))

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for~~

~~the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$(210.00) <u>140.00</u>
Temporary practice permit	50.00
Duplicate license	15.00
Verification of licensure	15.00
Renewal	((165.00)) <u>110.00</u>
Late renewal penalty	((110.00)) <u>55.00</u>
Expired license reissuance	65.00

**WSR 15-19-150
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed September 22, 2015, 2:48 p.m., effective March 1, 2016]

Effective Date of Rule: March 1, 2016.

Purpose: WAC 246-980-990, the amended rule increases application and certification renewal fees for home care aides. Current licensing fees do not generate the revenue needed to fully cover the costs of administering the home care aide licensing program. RCW 43.70.250 requires the department to charge sufficient fees to cover the costs of administering each profession. The adopted fees meet this requirement by increasing revenue to cover costs.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, 43.70.280.

Adopted under notice filed as WSR 15-13-124 on June 16, 2015.

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

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

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

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

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

Date Adopted: September 22, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

WAC 246-980-990 Home care aide certification fees.

(1) Certifications must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for home care aide:

Title of Fee	Fee
Application	\$(60.00) 85.00
Certification renewal	((60.00)) 85.00
Late renewal penalty	30.00
Expired certification reactivation	30.00
Duplicate certification	15.00
Verification	25.00

**WSR 15-19-152
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed September 22, 2015, 5:43 p.m., effective October 23, 2015]

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

Purpose: Chapter 246-455 WAC, Hospital patient discharge information, amending and creating new rules to strengthen protections of patient health care information.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-455-090 and 246-455-100; and amending WAC 246-455-010, 246-455-020, 246-455-070, and 246-455-080.

Statutory Authority for Adoption: RCW 43.70.052, ESSB 6265 (2015).

Adopted under notice filed as WSR 15-10-065 on May 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: One minor change was made to WAC 246-455-020 (1)(n) to correct "Source of point of origin" to "Point of origin for admission" to align with National Uniform Billing Committee standards.

A final cost-benefit analysis is available by contacting Kris Reichl, P.O. Box 47814, Olympia, WA 98504-7814, phone (360) 236-4311, fax (360) 753-4135, e-mail kristin.reichl@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 2.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 2.

Date Adopted: August 5, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-010 Definitions. (~~(As used in)~~) The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise(;

(1) ~~"Department"~~ means department of health.

(2) ~~"Diagnosis related groups"~~ is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.

(3) ~~"Hospital"~~ means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(4) ~~"CHARS"~~ means comprehensive hospital abstract reporting system.

(5) ~~"CHARS Procedure Manual"~~ means the written instructions for reporting hospital discharge data to the department.

(6) ~~"CHARS 837 Companion Guide"~~ means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.

(7) ~~Uniform Billing "UB 92/UB 04 data set"~~ means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. The UB 92 specifications will be used until they are replaced by the UB 04 of the National Uniform Billing Committee. Data elements are completely defined in the *CHARS Procedure Manual* which may be obtained on the department's web site or by contacting the department.

(8) ~~"Patient discharge"~~ means the termination of an inpatient admission or observation stay, including an admission as a result of a birth, in a Washington hospital.

(9) ~~"Office of Management and Budget"~~ means a body within the Executive Office of the President of the United States which is tasked with coordinating United States Federal agencies and can be found at www.whitehouse.gov/OMB.

(10) ~~"Individually identifiable health information"~~ means any health information that can be linked or traced to an individual or family. It includes but is not limited to: Past, present and future health care; billings or payments for health care; physical or mental health conditions; and physical or mental health diagnosis. This includes names and parts of names, Social Security numbers and parts of Social Security numbers, date of birth, admission date, exact discharge date, procedure date, nine digit zip code and identifiers and patient control numbers assigned by a hospital for record retrieval.

(11) ~~"Minimum necessary use"~~ means that the use and disclosure of individually identifiable health information will

be limited to the minimum amount necessary to accomplish the authorized purpose.

(12) "~~Data sharing agreement~~" means a signed agreement between government agencies, or researchers having an Institutional Review Board approval for transmitting, receiving and using records containing individually identifiable health information. ~~Sharing such records requires each agency to have independent statutory authority to receive and disclose the information. The agreement specifies, at a minimum, what information will be exchanged, and the conditions or restrictions under which the information will be used and protected.~~);

(1) "CHARS" means comprehensive hospital abstract reporting system.

(2) "CHARS Procedure Manual" means the written instructions for reporting hospital discharge data to the department.

(3) "CHARS 837 Companion Guide" means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.

(4) "Data use agreement" means a signed agreement with the department for transmitting, receiving and using records containing individually identifiable or potentially identifiable health information. The agreement specifies, at a minimum, what information will be exchanged, the conditions or restrictions under which the information will be used and protected, restrictions on redisclosure of data and restrictions on attempts to locate information associated with a specific individual.

(5) "Department" means Washington state department of health.

(6) "Diagnosis-related groups (DRG)" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.

(7) "Discharge data" means a collection of patient records in which each record represents a single patient discharged from the hospital following an inpatient or observation stay.

(8) "Hospital" means any health care institution which is required to qualify for a license under chapter 70.41 RCW or as a psychiatric hospital under chapter 71.12 RCW.

(9) "Office of Management and Budget" means a body within the Executive Office of the President of the United States which is tasked with coordinating United States Federal agencies and can be found at <http://www.whitehouse.gov/omb>.

(10) "Patient discharge" means the termination of an inpatient admission or observation stay, including an admission as a result of a birth, in a Washington hospital.

(11) Uniform Billing "UB-04 data set" means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. Data elements are completely defined in the *CHARS Procedure Manual* which may be obtained on the department's web site or by contacting the department.

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-020 Reporting of ~~((UB-92/))~~ UB-04 data set information. (1) ~~((Effective for all hospital patient discharges on or after April 1, 1994,))~~ Hospitals shall collect and report the following ~~((UB-92 or UB-04))~~ data set elements to the department:

- (a) Patient control number
Patient's unique alpha-numeric number assigned by the hospital to facilitate retrieval of individual patient records
- (b) Type of bill
- (c) ~~((Medicare provider number ((UB-92)),))~~ National Provider Identifier (UB-04), or department assigned identifier, as applicable
- (d) Patient last name (at least the first four letters)
- (e) Patient first name (at least the first three letters)
- (f) Patient middle initial
- (g) Patient Social Security number (at least the last four digits)
- (h) Patient zip code (U.S.A.)
- (i) Patient country code (outside U.S.A.) International Organization for Standardization (ISO) 3166-1
- (j) Patient's date of birth
- (k) Sex
- (l) Admission date
- (m) Type of admission
- (n) ~~((Source of))~~ Point of origin for admission
- (o) Patient discharge status
- (p) Statement covers period (from - through)
- (q) Revenue code
- (r) Units of service
- (s) Total charges
- (t) Payer identification (up to three): Payer identification number per the CHARS procedure manual identifying each payer group from which the hospital may expect some payment of the bill
 - (u) Principal diagnosis code
 - (v) Other diagnosis codes
 - (w) External cause of injury (ECI) code
 - (x) Principal procedure code
 - (y) Other procedure code
 - (z) Attending provider identifier ~~((legacy ID for UB-92;))~~ National Provider Identifier ~~((or legacy for UB-04))~~ according to Centers for Medicare and Medicaid Services (CMS) schedule
 - (aa) Operating physician identifier ~~((legacy ID for UB-92;))~~ National Provider Identifier ~~((or legacy for UB-04))~~ according to CMS schedule, as applicable
 - (bb) Other provider identifiers ~~((legacy ID for UB-92;))~~ National Provider Identifier ~~((or legacy for UB-04))~~ according to CMS schedule, as applicable
 - (cc) Admission hour
 - (dd) Race - Per minimum Office of Management and Budget (OMB) standards
 - (ee) Ethnicity - Per minimum OMB standards
 - (ff) Discharge hour
 - (gg) Procedure date
 - (hh) Present on admission status
 - (ii) Health care provider taxonomy code

(jj) Health care common procedure coding system (HCPCS)

(kk) Service date

(2) The hospital shall report all patient discharge data described in WAC 246-455-010 and 246-455-020 according to (~~UB-92~~)UB-04 specifications unless noted otherwise.

AMENDATORY SECTION (Amending WSR 94-12-090, filed 6/1/94, effective 7/2/94)

WAC 246-455-070 Revisions to submitted data.

~~((H))~~ All data revisions required as a result of the edits performed pursuant to WAC 246-455-020 shall be corrected and returned to the department or its designee within fourteen working days.

~~((2) The department may assess a civil penalty as provided in RCW 70.170.070 and WAC 246-455-100 for the costs associated with more than one cycle of edits as described in WAC 246-455-060.)~~

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-080 Security of the data. (1) The department and its contractors or agents shall maintain the confidentiality of ~~((any individually identifiable health information))~~ data from CHARS as required by ~~((RCW 70.170-090 and federal Health Insurance Portability and Accountability Act standards))~~ chapter 70.170 RCW.

(2) The department shall institute security and system safeguards to prevent and detect unauthorized access, modification, or manipulation of individually identifiable health information. Accordingly, the safeguards will include:

(a) Documented formal procedures for handling the information;

(b) Physical safeguards to protect computer systems and other pertinent equipment from intrusion;

(c) Processes to protect, control and audit access to the information;

(d) Processes to protect the information from unauthorized access or disclosure when it is transmitted over communication networks;

(e) Processes to protect the information when it is physically moved from one location to another;

(f) Processes to ensure the information is encrypted when:

(i) It resides in an area that is readily accessible by individuals who are not authorized to access the information (e.g., shared network drives or outside the agency data centers);

(ii) It is stored in a format that is easily accessible by individuals who are not authorized to access the information (e.g., text files and spreadsheets);

(iii) It is stored on removable media, or portable devices (e.g., tapes, electronic disks, thumb drives, external hard drives, laptops and ~~((handheld))~~ hand-held devices).

NEW SECTION

WAC 246-455-085 Data files—Release of data files and data use agreements. The department may create and

release data files with patient discharge information as allowed under RCW 43.70.052. The type of information contained in the file, including direct and indirect patient identifiers, determines the category and permitted release of the data file.

(1) Confidential data files contain one or more direct patient identifiers.

(a) The department may distribute a confidential data file to:

(i) Government agencies after entering into a data use agreement; or

(ii) Researchers with approval from the Washington state IRB and a signed confidentiality agreement.

(b) Direct patient identifier means information that identifies a patient. Direct identifiers include:

(i) Patient first name;

(ii) Patient middle name(s);

(iii) Patient last name;

(iv) Social Security number;

(v) Patient control number or medical record number;

(vi) Patient zip code + four digits;

(vii) Dates that include day, month, and year; and

(viii) Admission and discharge dates in combination.

(c) Government agencies include: Washington state boards, commissions, committees, departments, educational institutions, or other Washington state agencies which are created by or pursuant to statute, other than courts and the legislature; Washington county or city agencies, U.S. federal agencies.

(d) In order to comply with RCW 70.02.240 protecting mental health information for youth, for patients under age eighteen, the confidential data file will not include mental health related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category.

(e) In order to comply with WAC 246-490-110 protecting the identity of facilities that provide abortions, for any hospitalization that includes a diagnosis or procedure code indicating an induced termination of pregnancy, the confidential file will not include patient name, facility ID, provider identifiers, or geographic identifiers less than state.

(f) The department may provide the fewest data elements necessary for the stated purpose of the project.

(2) Potentially identifiable data files contain indirect patient identifiers.

(a) The department may distribute a potentially identifiable data file to anyone after entering into a data use agreement with the requestor or requesting organization.

(b) Indirect patient identifier means information that may identify a patient when combined with other information. Identification of a specific patient is more likely when a file contains a group of ten or fewer similar hospitalizations.

(c) Indirect patient identifiers include the following data elements, in combination or individually, when they create a group of ten or fewer similar hospitalizations in a file:

(i) Hospital or provider identifiers;

(ii) Five digit zip code;

(iii) County, state, and country of residence;

(iv) Dates that include month and year;

(v) Admission and discharge hour;

- (vi) Secondary diagnosis, procedure, present on admission, external cause of injury, and payer codes;
- (vii) Age in years;
- (viii) Race and ethnicity.
- (d) The potentially identifiable data file does not contain any direct identifiers listed in subsection (1)(b)(i) through (viii) of this section.
 - (3) Public data file with no patient identifiers:
 - (a) The department may release an unrestricted public data file that does not contain information that alone or in combination with other information identifies a patient.
 - (b) The department may create a public file by:
 - (i) Removing all data elements identified in subsection (2)(c)(i) through (viii) of this section; or
 - (ii) By aggregating or anonymizing data identified in subsection (2)(c)(i) through (v), (vii), and (viii) of this section so that each combination of indirect patient identifiers remaining in the public file must appear at least ten times.
 - (c) The public data file does not contain any direct identifiers listed in subsection (1)(b)(i) through (viii) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-455-090 Release of the data.

WAC 246-455-100 Penalties for violation.