

WSR 10-24-009
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed November 18, 2010, 10:30 a.m., effective December 19, 2010]

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

Purpose: Comprehensive review of all of the board's rules to:

- Recognize on-line services' impact on procedures.
- Use consistent language throughout the rules.
- Incorporate board policy into rule.
- Add new rules to accommodate changes in environment.
- Reorganize the rules resulting in renumbering and grouping into like functions.

Citation of Existing Rules Affected by this Order:

WAC Sections:	Title:	New WAC Section:	Grouping
4-25-400	What is the authority for and the purpose of the board's rules?	4-30-020	Board Administration
4-25-410	Definitions.	4-30-010	Definitions
4-25-510	What is the board's meeting schedule and how are officers elected?	4-30-022	Board Administration
4-25-520	What public records does the board maintain?	4-30-024	Board Administration
4-25-521	How can the board be contacted?	4-30-026	Board Administration
4-25-530	Fees.	4-30-038	Board Administration
4-25-540	What rules govern the proceedings before the board?	4-30-028	Board Administration
4-25-550	Do I need to notify the board if I change my address?	4-30-032	Board Administration
4-25-551	Must I respond to inquiries from the board?	4-30-034	Board Administration
4-25-620	What are the requirements concerning integrity and objectivity?	4-30-040	Ethics and Prohibited Practices
4-25-622	When must a CPA or CPA firm be independent?	4-30-042	Ethics and Prohibited Practices
4-25-626	What restrictions govern commissions, referral, and contingent fees?	4-30-044	Ethics and Prohibited Practices
4-25-630	What are the requirements concerning competence?	4-30-046	Ethics and Prohibited Practices
4-25-631	With which rules, regulations and professional standards must a CPA, CPA-Inactive certificateholder, CPA firm, and firm owner comply?	4-30-048	Ethics and Prohibited Practices
4-25-650	What acts are considered discreditable?	4-30-052	Ethics and Prohibited Practices
4-25-660	What are the limitations on advertising and other forms of solicitation?	4-30-054	Ethics and Prohibited Practices
4-25-661	What are the limitations regarding individual and firm names?	4-30-056	Ethics and Prohibited Practices
4-25-710	What are the education requirements to qualify to apply for the CPA examination?	4-30-060	Uniform CPA Examination
4-25-720	How do I apply to take the CPA examination?	4-30-062	Uniform CPA Examination
4-25-721	What does the board consider to be cheating on the CPA examination, what actions may the board take if cheating is suspected, and what sanctions may the board impose if cheating occurs?	4-30-064	Uniform CPA Examination
4-25-730	What are the experience requirements in order to obtain a CPA license?	4-30-070	Individual Experience and Verification

WAC Sections:	Title:	New WAC Section:	Grouping
4-25-735	How does a CPA-Inactive certificateholder apply for licensure?	4-30-082	Washington Resident Individual Licensing
4-25-745	How do I apply for an initial CPA license?	4-30-080	Washington Resident Individual Licensing
4-25-746	How do I apply for a Washington state CPA license if I hold a valid CPA license in another state?	4-30-092	Individual Licensing by Interstate Reciprocity
4-25-747	Must an out-of-state individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?	4-30-090	Individual Licensing by Interstate Reciprocity
4-25-750	What are the CPA firm licensing requirements?	4-30-110	CPA Firm Organization and Ownership
4-25-752	How do I register to be a resident nonlicensee owner of a licensed firm and with which rules must a nonlicensee firm owner comply?	4-30-116	Firm Licensing Requirements
4-25-753	Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?	4-30-112	Firm Licensing Requirements
4-25-781	What are the rules governing reciprocity for accountants from foreign countries?	4-30-100	Individual Licensing by International Reciprocity
4-25-782	How do I apply for an initial Washington state license through foreign reciprocity?	4-30-102	Individual Licensing by International Reciprocity
4-25-783	How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?	4-30-104	Individual Licensing by International Reciprocity
4-25-790	How do I renew my individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?	4-30-094	Individual Licensing by Interstate Reciprocity
4-25-791	I am a CPA-Inactive certificateholder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee?	4-30-120	Conversions, Retirements and Reinstatements
4-25-792	How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?	4-30-124	Conversions, Retirements and Reinstatements
4-25-793	If I retire my license or CPA-Inactive certificate, how do I apply to return to my previous status as a licensee or a CPA-Inactive certificateholder?	4-30-122	Conversions, Retirements and Reinstatements
4-25-795	How do I reinstate a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?	4-30-126	Conversions, Retirements and Reinstatements
4-25-820	What are the requirements for participating in quality assurance review (QAR)?	4-30-130	Continuing Competency
4-25-830	What are the CPE requirements?	4-30-134	Continuing Competency
4-25-831	What are the program standards for CPE?	4-30-132	Continuing Competency
4-25-832	How do I report my CPE to the board?	4-30-136	Continuing Competency
4-25-833	What documentation must I retain to support my eligibility for CPE credits?	4-30-138	Continuing Competency
4-25-910	What are the bases for the board to impose discipline?	4-30-142	Investigations, Discipline And Enforcement
4-25-930	Does the board authorize the use of any other titles or designations?	4-30-058	Ethics and Prohibited Practices

New sections:

New WAC Sections:	Title:	Grouping
4-30-030	What are the requirements for communicating with the board and staff?	Board Administration
4-30-072	What are the responsibilities of a verifying CPA?	Individual Experience and Verification
4-30-114	How do I apply for and maintain a firm license?	Firm Licensing Requirements
4-30-140	What are the authority, structure, and processes for investigations and sanctions?	Investigations, Discipline And Enforcement

Repeal:

WAC Section:	Title:
4-25-610	Which rules govern the conduct of CPAs, CPA-Inactive certificateholders, CPA firms, and firm owners?

Statutory Authority for Adoption:

WAC Section:	Statutory Authority for Adoption
4-25-400	RCW 18.04.055
4-25-410	RCW 18.04.055, 18.04.025, 18.04.350
4-25-510	RCW 18.04.055, 42.30.070
4-25-520	RCW 18.04.055, 42.56.070
4-25-521	RCW 18.04.055, 42.56.040
4-25-530	RCW 18.04.055, 18.04.065, 18.04.105 (1)(e), (3), and (4)(e), 18.04.195(10), 18.04.205(4), 18.04.215 (3), (4), and (8), 42.56.120
4-25-540	RCW 18.04.055(1), 34.05.220, and 34.05.482
4-25-550	RCW 18.04.055(16)
4-25-551	RCW 18.04.055(16)
4-25-610	RCW 18.04.055(2)
Repeal	
4-25-620	RCW 18.04.055(2)
4-25-622	RCW 18.04.055(2)
4-25-626	RCW 18.04.055(2)
4-25-630	RCW 18.04.055(2)
4-25-631	RCW 18.04.055(2)
4-25-650	RCW 18.04.055(2)
4-25-660	RCW 18.04.055(2)
4-25-710	RCW 18.04.055(5), 18.04.105(1)
4-25-720	RCW 18.04.105(2)
4-25-721	RCW 18.04.105(2)
4-25-730	RCW 18.04.055(11), 18.04.105 (1)(d)
4-25-735	RCW 18.04.055(12), 18.04.105(4)
4-25-745	RCW 18.04.055, 18.04.105(1), 18.04.215(1)
4-25-746	RCW 18.04.180, 18.04.215(6)
4-25-747	RCW 18.04.350 (2), (3), (4), (5)

WAC Section:	Statutory Authority for Adoption
4-25-750	RCW 18.04.055(8), 18.04.195, 18.04.205
4-25-752	RCW 18.04.055(13), 18.04.195 (11) and (12)
4-25-753	RCW 18.04.055(8), 18.04.195
4-25-781	RCW 18.04.183
4-25-782	RCW 18.04.183
4-25-783	RCW 18.04.183, 18.04.215(2)
4-25-790	RCW 18.04.215 (2) and (4)
4-25-791	RCW 18.04.215 (2) and (4)
4-25-792	RCW 18.04.215 (2) and (4)
4-25-793	RCW 18.04.215(7)
4-25-795	RCW 18.04.215(2), 18.04.335, 34.05.220
4-25-820	RCW 18.04.055(9)
4-25-830	RCW 18.04.055(7), 18.04.215(5)
4-25-831	RCW 18.04.055(7), 18.04.215(5)
4-25-832	RCW 18.04.055(7), 18.04.215(5)
4-25-833	RCW 18.04.055(7), 18.04.215(5)
4-25-910	RCW 18.04.055(16), 18.04.195 (11)(d), 18.04.295, 18.04.305, 18.04.350(2)
4-25-930	RCW 18.04.350(13)
4-30-030	RCW 18.04.055 (1), (8), (16), 18.04.183, 18.04.195 (13)(b), 18.04.205, 18.04.215 (9)(b), 34.05.220, and 34.05.482
4-30-072	RCW 18.04.055(11), 18.04.105 (1)(d)
4-30-114	RCW 18.04.055(8), 18.04.195, 18.04.205
4-30-140	RCW 18.04.045 (7) and (8), 18.04.055, 18.04.295, 18.04.350(6)

Adopted under notice filed as WSR 10-18-090 on September 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: After considering all written and oral testimony, the board did not adopt the proposed changes to WAC 4-25-640 What are the requirements concerning records and clients confidential information?, 4-30-051 What are the requirements concerning client records, including response to requests by clients and former clients for records?, and 4-30-670 What enforcement actions must be reported to the board? The board will file a supplemental notice and reopen the revised proposals for public comment.

The board made no changes to the text of the forty-six adopted rules.

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 4, Amended 42, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 42, 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 4, Amended 42, Repealed 1.

Date Adopted: October 29, 2010.

Richard C. Sweeney, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-410 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

(1) **"Act"** means the Public Accountancy Act codified as chapter 18.04 RCW.

(2) **"Active individual participant"** means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

(3) **"Affiliated entity"** means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.

(4) **"Applicant"** means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license, a CPA-Inactive certificate, registration as a resident nonlicensee firm owner, or practice privileges.

(5) **"Attest"** means providing the following financial statement services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(6) **"Audit," "review,"** and **"compilation"** are terms reserved for use by licensees, as defined in subsection (28) of this section.

(7) **"Board"** means the board of accountancy created by RCW 18.04.035.

(8) **"Certificate"** means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

(9) **"Certificate holder"** means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

(10) **"Client"** means the person or entity that retains a licensee, as defined in subsection (28) of this section, a CPA-Inactive certificate holder, a nonlicensee firm owner of a licensed firm, or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

(11) **"Commissions and referral fees"** are compensation arrangements where((=

((=)) the primary contractual relationship for the product or service is not between the client and licensee, as defined in subsection (28) of this section, CPA-Inactive certificate holder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm; and

((=)) (a) Such persons are not primarily responsible to the client for the performance or reliability of the product or service; or

((=)) (b) Such persons add no significant value to the product or service; or

((=)) (c) A third party instead of the client pays the persons for the products or services.

(12) **"Compilation"** means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **"Contingent fees"** are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is

attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

(14) **"CPA"** or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

(15) **"CPA-Inactive"** means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

(16) **"CPE"** means continuing professional education.

(17) **"Firm"** means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

(18) **"Generally accepted accounting principles"** (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

(19) **"Generally accepted auditing standards"** (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

(20) **"Holding out"** means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

(21) **"Home office"** is the location specified by the client as the address to which a service is directed.

(22) **"Inactive"** means the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

(23) **"Individual"** means a living, human being.

(24) **"Independence"** means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

(25) **"Interactive self-study program"** means a CPE program that provides feedback throughout the course.

(26) **"IRS"** means Internal Revenue Service.

(27) **"License"** means a license to practice public accounting issued to an individual or a firm under the act or the act of another state.

(28) **"Licensee"** means an individual or firm holding a valid license to practice public accounting issued under the act, including out-of-state individuals (~~(qualifying for)~~) exercising practice privileges in this state under RCW 18.04.350 (2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b).

(29) **"Manager"** means a manager of a limited liability company licensed as a firm under the act.

(30) **"NASBA"** means the National Association of State Boards of Accountancy.

(31) **"Nonlicensee firm owner"** means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

(32) **"PCAOB"** means Public Company Accounting Oversight Board.

(33) **"Peer review"** means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under subsection (38) of this section.

(34) **"Person"** means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

(35) **"Practice privileges"** are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

(36) **"Principal place of business"** means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(37) **"Public practice"** or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or

as an individual (~~(holding)~~) exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(~~((6))~~) (10) by persons or firms not required to be licensed under the act.

(38) **"Quality assurance review or QAR"** is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

(39) **"Reciprocity"** means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

(40) **"Referral fees"** see definition of "commissions and referral fees" in subsection (11) of this section.

(41) **"Reports on financial statements"** means any reports or opinions prepared by licensees, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services, as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of an entity, whether public, private, or governmental, conforms with generally accepted accounting principles or an "other comprehensive bases of accounting," or the presentation and disclosure requirements of other professional standards. "Reports on financial statements" does not include services referenced in RCW 18.04.350(10) provided by persons not holding a license under the act.

(42) **"Representing oneself"** means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

(43) **"Rules of professional conduct"** means rules adopted by the board to govern the conduct of licensees, as defined in subsection (28) of this section, while representing themselves to others as licensees. These rules also govern the conduct of CPA-Inactive certificate holders, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

(44) **"SEC"** means the Securities and Exchange Commission.

(45) **"Sole proprietorship"** means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

(46) **"State"** includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time

as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

(47) **"Statements on auditing standards (SAS)"** are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

(48) **"Statements on standards for accounting and review services (SSARS)"** are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

(49) **"Statements on standards for attestation engagements (SSAE)"** are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

AMENDATORY SECTION (Amending WSR 07-14-034, filed 6/26/07, effective 7/27/07)

WAC 4-25-510 What is the board's meeting schedule and how are officers elected? Regular board meetings begin at 9:00 a.m. on the last Friday of the month in the months of January, April and July or as otherwise determined by the board. The board holds an annual meeting beginning at 9:00 a.m. on the last Friday of October or as otherwise determined by the board.

The board consists of nine members. At the annual meeting the board elects the chair, vice-chair, and secretary from its members. The newly elected officers assume the duties of their offices on January 1 following the annual board meeting. Officers serve a term of one year and can be reelected for one additional term.

Either the chair or a quorum of the board has the authority to call meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice-chair presides. The board determines other duties of the officers.

The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC (~~(4-25-521)~~) 4-30-026 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-520 What public records (~~does the board maintain~~) are available? (~~The board maintains the following public records:~~

- ~~(1) A data base of licensees and certificate holders;~~
- ~~(2) A data base of CPA examination candidates;~~
- ~~(3) A data base of registered resident nonlicensee firm owners;~~
- ~~(4) Board orders;~~
- ~~(5) Board meeting minutes;~~
- ~~(6) Board policies;~~
- ~~(7) Board rule-making files; and~~

(8) Documents dealing with the regulatory, supervisory, and enforcement responsibilities of the board.) All public records of the agency are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the office of the Washington State Board of Accountancy at 711 Capitol Way S., Suite 400, Olympia, Washington, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) **Records index.** An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the agency's office.

(3) **Organization of records.** The agency maintains its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the agency's office. A variety of records are also available on the agency's web site at www.cpaboard.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request in writing by letter, fax, or e-mail addressed to the public records officer. **Written requests must include the following information:**

- Date of the request;
- Name of the requestor;
- Address of the requestor and other contact information, including telephone number and any e-mail address;
- Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should make that preference clear in the request and make arrangements to make payment for the copies of the records prior to delivery or provide a deposit of the estimated copy costs provided by the agency upon request prior to the copies being made. Copies will be made by the agency's public records officer or designee. Costs for copying are fifteen cents per page, except that there is no charge for the first fifty pages of records included in any request by one requestor.

(e) When fulfilling public records requests the agency will perform its public records responsibilities in the most expeditious manner consistent with the agency's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the agency's anticipated installment delivery timetable.

(h) In certain instances the agency may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within fifteen days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the fifteen-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations:

In order to obtain a list of individuals under the provisions of RCW ((42.17.260(9))) 42.56.070(9), educational organizations and professional ((organizations)) associations must ((use the form provided by the board and)) apply for and receive recognition by the board. The requesting organization must provide sufficient information to satisfy the approving authority that the requested list of individuals is primarily for educational and professionally related uses. Fees ((for lists)) must be paid in advance before approved requests will be honored.

Board forms are available on the board's web site or upon request for your use.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-521 How can I contact the board? The board's administrative office, executive director and staff are located in Olympia, Washington. You may utilize the following numbers or addresses to contact the board:

- 711 ((South)) Capitol Way South, Suite 400, Olympia, WA 98501 (physical address);
 - P.O. Box 9131, Olympia, Washington 98507-9131 (mailing address);
 - 360/753-2586 (telephone);
 - 360/664-9190 (fax);
 - 800/833-6388 (TT service);
 - 800/833-6385 (Telebraille services);
 - customerservice@cpaboard.wa.gov (e-mail address);
- and
- www.cpaboard.wa.gov (web site address).

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-540 What rules govern the proceedings before the board? Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, practice and procedure in and before the board are governed by the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

- (1) Staff denials of initial individual license applications, renewals, or applications for reinstatement;
- (2) Staff denials of CPA-Inactive certificate renewals or applications for reinstatement;
- (3) Staff denials of practice privilege reinstatements;
- (4) Staff denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;
- (5) Staff denials of initial firm license applications, renewals, and amendments;
- (6) Staff denials of exam applications; and
- (7) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within thirty days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice-chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for ((the)) brief adjudicative proceedings ((is the executive director, or designee)). ((After consulting with a board member, the executive director, or designee,)) The presiding officer renders a decision either upholding or overturning the ((decision by board staff)) denial. This decision, called an order, ((is mailed)) will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice-chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within twenty-one days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice-chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice-chair's, or designee's, decision, also called an order, ((is mailed)) will be provided to you at the last address you furnished to the board.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-551 Must I respond to inquiries from the board? Yes. All licensees, including out-of-state individuals ((qualifying for)) exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under

the condition prescribed in RCW 18.04.195 (1)(b), CPA-Inactive certificate holders, nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **twenty days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-620 What are the requirements concerning integrity and objectivity? When offering or performing services, licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must:

- Remain honest and objective;
- Not misrepresent facts;
- Not subordinate their judgment to others; and
- Remain free of conflicts of interest unless such conflicts are specifically permitted by board rule or professional standards listed in WAC ((4-25-631)) 4-30-048.

If the language of the professional standards listed in WAC ((4-25-631)) 4-30-048 differ from or conflict with specific board rules, board rules prevail.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-622 When is independence required?

When performing professional services for which a report expressing assurance is prescribed by professional standards, licensees, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must evaluate and maintain their independence so that opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on any report expressing assurance by such persons. Such persons are required:

- (1) To comply with all applicable independence rules, regulations, and the AICPA code of conduct as referenced in and required by WAC ((4-25-631)) 4-30-048; and
- (2) To decline engagements for which a report expressing assurance is prescribed by professional standards when such persons have a relationship that could lead a reasonable and foreseeable user to conclude that such persons are not independent.

Independence is not required when performing a compilation engagement provided the report discloses a lack of independence.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-626 What restrictions govern commissions, referral, and contingent fees? For the purposes of this section, the term "licensed firm" includes any affiliated entity(ies) and the term "firm owner" includes the owner(s) of any affiliated entity(ies).

- (1) Licensees and/or their employees must not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or

service to be supplied by a client, or receive a commission, when such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards for that client. This prohibition applies:

(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and

(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.

(2) Licensees and/or their employees must also not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards; or

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(3) The prohibition against contingent fees applies:

(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and

(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.

(4) Fees are not considered contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. Fees may vary depending, for example, on the complexity of services rendered.

(5) Any person subject to board rules who is not prohibited by this section from performing services for, or receiving a commission, referral or contingent fee and who are paid or expect to be paid accordingly must disclose that fact to any person or entity to whom such persons recommend or refer a product or service to which the commission, referral or contingent fee relates in the manner prescribed below:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee;

(c) Specify the licensee's, CPA-Inactive certificate holder's, or nonlicensee firm owner's role as the client's advisor; and

(d) Obtain the client's consent to the fee arrangement in writing.

(6) Nothing in this rule shall be interpreted to preclude licensees, as defined in WAC ((4-25-410) 4-30-010, CPA-Inactive certificate holders, or nonlicensee firm owners from purchasing, selling, or merging all or a portion of a licensed firm or affiliated entity or to require disclosure to clients of terms or payments made or received pursuant to the purchase, sale, or merger.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-631 Compliance is required with which rules, regulations and professional standards? Licensees,

including out-of-state individuals (~~(qualifying for)~~ exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b), CPA-Inactive certificate holders, CPA firms, nonlicensee firm owners, and employees of such persons must comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken. However, if the requirements found in the professional standards listed in this section differ from the requirements found in specific board rules, board rules prevail.

Authoritative bodies include, but are not limited to, the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); the Federal Office of Management and Budget (OMB); the Internal Revenue Service (IRS); the American Institute of Certified Public Accountants (AICPA), and federal, state, and local audit, regulatory and tax agencies.

Such standards include:

(1) Statements on Auditing Standards and related Auditing Interpretations issued by the AICPA;

(2) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;

(3) Statements on Governmental Accounting and Financial Reporting Standards issued by GASB;

(4) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by AICPA;

(5) Statements of Financial Accounting Standards and Interpretations, and Staff Positions issued by FASB, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB;

(6) Statement on Standards for Consulting Services issued by the AICPA;

(7) Statements on Quality Control Standards issued by the AICPA;

(8) Statements on Standards for Tax Services and Interpretation of Statements on Standards for Tax Services issued by the AICPA;

(9) Statements on Responsibilities in Personal Financial Planning Practice issued by the AICPA;

(10) Statements on Standards for Litigation Services issued by the AICPA;

(11) Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings;

(12) Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;

(13) AICPA Industry Audit and Accounting Guides;

(14) SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements;

(15) Standards issued by the PCAOB; and

(16) IRS Circular 230;

(17) Any additional national or international standards recognized by the AICPA, PCAOB, SEC and/or GAO.

If the professional services are governed by standards not included in subsections (1) through (16) of this section, individuals and firms including persons (~~(qualifying for)~~) exercising practice privileges under RCW 18.04.350(2) who offer or render professional services in this state or for clients located in this state and the firms rendering professional services in this state or for clients located in this state through such qualifying individuals must:

(a) Maintain documentation of the justification for the departure from the standards listed in subsections (1) through (16) of this section;

(b) Determine and document what standards are applicable; and

(c) Demonstrate compliance with the applicable standards.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-710 What are the education requirements to qualify to apply for the CPA examination? (1) **Education requirements:** Effective July 1, 2000, to apply for the CPA examination you must have completed:

(a) At least one hundred fifty semester hours (two hundred twenty-five quarter hours) of college education, including:

(b) A baccalaureate or higher degree; and

(c) An accounting concentration as defined as at least:

(i) Twenty-four semester hours (thirty-six quarter hours) or the equivalent in accounting subjects of which at least fifteen semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite). For the purposes of meeting this subsection, individuals will be given 1.5 credits for each 1.0 graduate level credit of accounting courses taken; and

(ii) Twenty-four semester hours (thirty-six quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.

(d) The board will not recognize accounting concentration credits awarded for "life experience" or similar activities retroactively evaluated and recognized by colleges or universities. This restriction is not intended to apply to internships prospectively approved by colleges or universities.

(2) **One hundred eighty-day provision:** If you expect to meet the education requirements of this section within one hundred eighty days following the examination, you will be eligible to take the CPA examination provided you submit(~~;~~ ~~on a form provided by the board's designee,~~) a signed (~~(confirmation)~~) Certificate of Enrollment from the (~~(university that)~~) educational institution in which you are enrolled (~~(it)~~) stating that you will meet the board's education requirements within one hundred eighty days following the day you first sit for any one section of the examination. If you apply for the exam using the one hundred eighty-day provision, then within two hundred ten days of first sitting for any section of the exam, you must provide the (~~(board)~~) examination administrator complete documentation demonstrating that you met

the board's education requirements within one hundred eighty days of first sitting for any one section of the exam. If you do not provide such documentation within the required two hundred ten-day time period, your exam score(s) will not be released and you will not be given credit for any section(s) of the examination. Applicants failing to provide such documentation must reapply as a first-time applicant.

(3) **Education obtained outside the United States:** If you obtained all or a portion of your education outside the United States you must have your education evaluated by a board approved foreign education credential evaluation service. The board will establish the criteria for board approval of foreign education credential evaluation services. The board will not provide education credential evaluation services.

(4) **Semester versus quarter hours:** As used in these rules, a "semester hour" means the conventional college semester hour. Your quarter hours will be converted to semester hours by multiplying them by two-thirds.

(5) **Accreditation standards:** For purposes of this rule, the board will recognize colleges and universities which are accredited in accordance with (a) through (c) of this subsection.

(a) The accredited college or university must be accredited at the time your education was earned by virtue of membership in one of the following accrediting agencies:

(i) Middle States Association of College and Secondary Schools;

(ii) New England Association of Schools and Colleges;

(iii) North Central Association of Colleges and (~~(Secondary)~~) Schools, Higher Learning Commission;

(iv) Northwest Commission on Colleges and Universities (formerly the Northwest Association of Schools and Colleges);

(v) Southern Association of Colleges and Schools;

(vi) Western Association of Schools and Colleges; and

(vii) Accrediting Commission for Independent Colleges and Schools, or its predecessor, the Accrediting Commission of the Association of Independent Colleges and Schools.

(b) If an institution was not accredited at the time your education was earned but is so accredited at the time your application is filed with the board, the institution will be deemed to be accredited for the purpose of (a) of this subsection provided that it:

(i) Certifies that your total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(ii) Furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify you for a concentration in accounting are substantially equivalent to postaccrediting courses.

(c) If your degree was received at an accredited college or university as defined by (a) or (b) of this subsection, but the educational program which was used to qualify you for a concentration in accounting included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited

institution from which your degree was received, provided the accredited institution either:

(i) Has accepted such courses by including them in its official transcript; or

(ii) Certifies to the board that it will accept such courses for credit toward graduation.

(6) **Alternative to accreditation:** If you graduated from a four-year degree-granting institution that was not accredited at the time your degree was received or at the time your application was filed, you will be deemed to be a graduate of a four-year accredited college or university if a credentials evaluation service approved by the board certifies that your degree is equivalent to a degree from an accredited college or university as defined in subsection (5) of this section. The board does not provide education credential evaluation services.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-720 How do I apply to take the CPA examination? (1) **Application (~~(form)~~) process and due dates:** Your application to take the CPA examination must be (~~made on a form provided by the board's designee and filed with the board's designee by the due date specified by the board on the application form~~) submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within sixty days of the date their application is (~~received by~~) submitted to the board's (~~designee. Applicants are responsible for submitting all required documentation, application forms, and fees~~) examination administrator. Your application is not considered complete until all of the following are (~~received by the board's designee~~) provided:

• (~~A fully completed~~) Complete application (~~(form)~~) information and requested documents;

- Fee(s)(~~;~~)
- ~~Proof that you have met the education requirements;~~
- ~~Your proof of identity as determined by the board and specified on the application form;~~
- ~~Other required supporting documents; and~~
- ~~Proof from NASBA's National Candidate Data Base that you have not previously taken, or applied to take, the same section(s) of the exam during the current examination window).~~

(2) **Fee refund and forfeiture:** Upon submission of your application to the (~~board's designee~~) examination administrator, no portion of the board's administrative fee is refundable. Upon the (~~board's submission of your~~) examination administrator's authorization to test (~~to the National Association of State Boards of Accountancy~~), no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all of the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** (~~Notice of the denial of your application, or notice of your eligibility to take the examination will be sent to you by the board's designee.~~) You (~~(will)~~) must contact the approved test (~~(site)~~) provider to schedule the

time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS), the NTS will be valid for one taking of the examination within the six months following the date of the NTS.

Notice of a denial of your application, or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content and grading:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The examination will consist of the following four sections: Auditing and attestation; financial, accounting and reporting; regulation; and business environment and concepts. The board may accept the advisory grading services of the American Institute of Certified Public Accountants.

(5) **Examination(~~(grading and conditioning)~~) process:**

(a) **Conditions for examinations held prior to January 1, 2004:** (~~The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants. Seventy-five or better is a passing grade for each section of the examination. Each time you sit for the examination you must take all sections you have not previously passed. You are required to pass all sections of the examination in order to qualify for a license. If at a given sitting of the examination you pass two or more, but not all sections of the examination, then you will receive credit for those sections that you pass and you will not be required to take those sections again provided:~~

(i) ~~You took all unpassed sections of the examination at that sitting;~~

(ii) ~~You attained a minimum grade of fifty on each section of the examination not passed at that sitting;~~

(iii) ~~You pass the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;~~

(iv) ~~At each subsequent sitting you take all sections not yet passed and you attain a minimum grade of fifty on those sections taken but not passed at that sitting; and~~

(v) ~~In order to receive credit for passing additional sections in a subsequent sitting you attain a minimum grade of fifty on sections taken but not passed at that sitting.)~~ Contact a customer service representative at customerservice@cpaboard.wa.gov or by phone at 360-753-2586.

(b) **For examinations (~~(held)~~) taken after December 31, 2003:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

(i) ~~To (~~qualify to apply~~)~~ satisfy the examination requirement for a license you must (~~(attain)~~) have achieved a score of seventy-five on all four sections of the examination within a rolling eighteen-month period.

(ii) You may take the required four sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for eighteen months from the actual date you (~~(took the)~~) successfully passed any particular section(~~(without having to attain a minimum~~

score on any failed section(s) and without regard to whether you have taken other sections)) of the examination.

(iii) You must pass all four sections of the examination within a rolling eighteen-month period, which begins on the date that the first section(s) is passed. ~~((When determining the date that))~~ A section is considered passed on the date that is used is the date that you took the exam section and not the date that your grade(s) is released.

(iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the ~~((item bank))~~ examination is refreshed).

(v) In the event you do not pass all four sections of the examination within the rolling eighteen-month period, credit for any section(s) passed prior to the eighteen-month period will expire and you must retake ~~((that))~~ any expired section((s)).

~~((e))~~ **Transitioning for candidates obtaining conditional credits under the provisions of (a) of this subsection:**

(i) ~~If you earned conditional credit(s) under the provisions of (a) of this subsection and as of February 15, 2004, those conditional credits remained valid under the provisions of (a) of this subsection, you will retain conditional credit for the corresponding sections of the examination as follows:~~

Examination section taken prior to January 1, 2004	Examination section taken after December 31, 2003
Auditing	Auditing and Attestation
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting
Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts

(ii) ~~If you qualify for conditional credit(s) for a section of the examination under (e)(i) of this subsection, you will lose the conditional credit(s) for the section unless you complete all remaining section(s) of the examination within the transition period which is the lesser of:~~

~~• The maximum number of testing opportunities that you had remaining to complete all sections of the examination under the provisions of (a) of this subsection; or~~

~~• The number of remaining testing opportunities you had remaining to complete all sections of the examination under the provisions of (a) of this subsection multiplied by six months.~~

(iii) ~~If you do not pass all remaining sections during the transition period, the conditional credit for the section(s) you passed under the provision of (a) of this subsection will become invalid. Any section you pass after December 31, 2003, will be subject to the provisions of (b) of this subsection with the following exception:~~

~~• You will not lose conditional credit for any section passed during the transition period, even though more than eighteen months may have elapsed from the date the section is passed, until the end of your transition period.~~

~~(iv) You will retain credit for any and all sections of an examination passed in another state if credit would have been given under the Washington state requirements in effect on the date you took the examination.~~

~~(v) If you pass a section of the examination, the date you took the section of the examination is the date you receive credit for passing the section.~~

~~(6) Ethics exam: Upon passing the CPA examination, applicants for licensure are required to attain and demonstrate a passing grade of ninety percent or better on the AICPA professional code of conduct examination.)~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-721 What does the board consider to be cheating on the CPA examination, what ~~((actions may the))~~ testing consequences or board ~~((take))~~ actions can result if cheating is suspected~~((, and what sanctions may the board impose if cheating occurs))~~ or observed? (1) Cheating includes, but is not limited to:

(a) Unauthorized communication with others inside or outside of the examination room while the examination is in progress;

(b) Substitution by a candidate of another person to sit in the test site and take the examination on behalf of the candidate;

(c) Referencing crib sheets, text books, or other unauthorized material or electronic media inside or outside the examination room while the examination is in progress;

(d) Copying or attempting to copy another candidate's answers;

(e) Disclosing or attempting to disclose examination questions and/or answers to others;

(f) Bringing unauthorized prohibited items into the examination site or possessing unauthorized prohibited items in the examination site;

(g) Retaking or attempting to retake a section by an individual who holds a license or who has unexpired credit for passing the section, unless the individual has been expressly authorized by the board to participate in a "secret shopper" program.

(2) Cheating on the CPA examination is dishonesty directly related to the professional responsibilities of a CPA and demonstrates a lack of good character. When determining appropriate sanctions for cheating, the board may impose one or more of the following penalties:

(a) Enter a failing grade for any or all parts of the candidate's examination;

(b) Bar a candidate from taking future examinations;

(c) Notify other jurisdictions of the board's conclusions and order;

(d) Fine up to thirty thousand dollars;

(e) Recovery of investigative and legal costs; or

(f) Referral to the appropriate law enforcement agency(ies) for prosecution.

(3) If a candidate is suspected of cheating, the board or its representative(s) may expel the candidate from the examination or move the candidate suspected of cheating to a position in the test center that is away from other examinees or where the candidate may be more closely observed. The board or its representatives may require a candidate suspected of cheating, or a candidate who may have observed cheating, to respond to board inquiry. The board may schedule a hearing to determine the validity of the charge of cheating.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-730 What are the experience requirements in order to obtain a CPA license? (1) Qualifying experience may be obtained through the practice of public accounting and/or employment in industry(, academia,) or government. ((You)) In certain situations, employment in academia may also provide experience to obtain some or all of the competency requirements. Qualifying experience may be obtained through one or more employers, with or without compensation, and may consist of a combination of full-time and part-time employment.

((1-You)) (2) Employment experience ((must support the attainment of)) should demonstrate that it occurred in a work environment and included tasks sufficient to have provided an opportunity to obtain the competencies defined by subsection ((2)) (3) of this section and:

(a) ((Cover)) Covered a minimum twelve-month period (this time period does not need to be consecutive);

(b) ((Consist)) Consisted of a minimum of two thousand hours;

(c) ((Be obtained through the use of)) Provided the opportunity to utilize the skills generally used in business and accounting ((, attest, management advisory, financial advisory, tax, tax advisory or consulting skills)) and auditing including, but not limited to, accounting for transactions, budgeting, data analysis, internal auditing, preparation of reports to taxing authorities, controllership functions, financial analysis, performance auditing and similar skills;

(d) Be verified by a licensed CPA as meeting the requirements identified in subsection ((3)) (5) of this section; and

(e) ((Unless you meet the requirements of subsection (4) of this section,)) Be obtained no more than eight years prior to the date the board receives your complete license application.

((2)) (3) Competencies: The experience ((must support the attainment of)) should demonstrate that the work environment and tasks performed provided the applicant an opportunity to obtain the following competencies:

(a) ((Understand the rules of professional conduct contained in chapter 4-25 WAC;)) Knowledge of the Public Accountancy Act and related board rules applicable to licensed persons in the state of Washington;

(b) Assess the achievement of an entity's objectives;

(c) Develop documentation and sufficient data to support analysis and conclusions;

(d) Understand transaction streams and information systems;

(e) Assess risk and design appropriate procedures;

(f) Make decisions, solve problems, and think critically in the context of analysis; and

(g) Communicate scope of work, findings and conclusions effectively.

~~((3)) (4) The applicant's responsibilities: The applicant for a license requesting verification is responsible for:~~

(a) Providing information and evidence to support the applicant's assertion that their job experience could have reasonably provided the opportunity to obtain the specific competencies, included on the applicant's Experience Affidavit form presented for the verifying CPA's evaluation;

(b) Producing that documentation and the completed Experience Affidavit form to a qualified verifying CPA of their choice;

(c) Determining that the verifying CPA meets the requirements of subsection (5) of this section; and

(d) Maintaining this documentation for a minimum of three years.

(5) Qualification of a verifying CPA: ((To verify a candidate's experience you)) A verifying CPA must have held a valid CPA license to practice public accounting in the state of Washington or ((another jurisdiction on the date that you verified the candidate's experience and also)) be qualified for practice privileges as defined in RCW 18.04.350(2) for a minimum of five years prior to verifying the candidate's experience, including the date that the applicant's experience is verified. The five years do not need to be consecutive.

~~((4) CPA Inactive certificate holders applying for a license: If you held a Washington state certificate on June 30, 2001, and you submit your application for a license by June 30, 2006, you may include experience obtained at any time during your lifetime.~~

(5) Experience affidavit: The applicant must verify that they have met the experience requirements of this section on the appropriate form(s) provided by the board. The verifying CPA must certify that the applicant's experience meets subsection (2) of this section.

(6) Records retention: Candidates must maintain documentation supporting the representations made on their experience affidavit for a minimum of three years after the date the candidate's initial license is issued by the board.

(7) Audit: The board may audit compliance with these experience requirements at any time during the three-year period following the date the candidate's initial license is issued.)

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-735 How does a CPA-Inactive certificate holder apply for licensure? CPA-Inactive certificate holders are individuals who held a valid certificate on June 30, 2001, but did not hold a valid Washington state license to practice public accounting on that date. Individuals who did not hold a valid certificate on June 30, 2001 and current licensees are not eligible for CPA-Inactive certificate holder status.

(1) ((If you are a CPA Inactive certificate holder you:

(a) May not "practice public accounting" as that term is defined in WAC 4-25-410;

~~(b) Must meet the CPE requirements of WAC 4-25-830(1) and supporting documentation requirements of WAC 4-25-833;~~

~~(c) Must comply with the act and board rules;~~

~~(d) Must meet the renewal requirements of WAC 4-25-790; and~~

~~(e) Must use the title CPA-Inactive and print or display the word "Inactive" immediately following the initials CPA or certified public accountant whenever the initials CPA or certified public accountant is printed on a business card, letterhead, or other document including documents published or transmitted through electronic media, in exactly the same font and font size as the initials CPA or certified public accountant.~~

~~(2) If you are a CPA-Inactive certificate holder,) To qualify for licensure ((you) a CPA-Inactive certificate holder must meet the:~~

~~(a) ((Meet the)) Good character requirements of RCW 18.04.105 (1)(a);~~

~~(b) Experience requirements of WAC ((4-25-730 or have had an approved experience affidavit on file with the board on or before June 30, 2001)) 4-30-070 within the eight-year period immediately preceding your application; and~~

~~((b) Meet the)) (c) CPE requirements of WAC ((4-25-830)) 4-30-134(5).~~

~~((3)) (2) To apply for a license, you must also submit to the board a certification that you meet the requirements of subsection ((2)) (1) of this section and:~~

~~(a) Have not held out in public practice during the time in which you were a CPA-Inactive certificate holder; and~~

~~(b) Other required documentation or information deemed necessary by the board.~~

~~((Board forms are available on the board's web site or upon request for your use-)) (3) You must provide the required information, documents, and fees (if applicable) to the board either by making application through the board's on-line application system or on a form provided upon request.~~

~~(4) ((An initial application is not complete and cannot be processed until)) You must submit all ((fees, required) requested information, ((required documentation, or other documentation or information the board may deem necessary is received by the board)) documents, and fees (if applicable) to the board before the application will be evaluated.~~

~~((When your application is approved)) (5) Upon assessment of your qualifications and approval of your application, your license ((will be mailed to your address of record)) status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.~~

~~((5)) (6) Your CPE reporting period and your renewal cycle will remain the same.~~

~~((6)) (7) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.~~

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-745 How do I apply for an initial individual CPA license? (1) To qualify to apply for an initial license you must meet the:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Education requirements of WAC ((4-25-710)) 4-30-060;

(c) Examination requirements of WAC ((4-25-720)) 4-30-062;

(d) Ethics course requirements by achieving and documenting a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct;

(e) Experience requirements of WAC ((4-25-730)) 4-30-070; and

~~((e)) (f) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC ((4-25-830)) 4-30-134 (1)(a) within the thirty-six month period immediately preceding submission of your license application ((and)). That CPE must include ((four)) CPE hours in ethics and regulation applicable to the practice of public accounting in Washington state meeting the requirements of WAC ((4-25-830(3) which)) 4-30-134(3). The regulatory ethics portion of the combined one hundred twenty-hour CPE requirement must be completed within the six month period immediately preceding submission of your license application.~~

~~(2) ((To apply for an initial license)) You must ((fully)) provide the required information ((above-~~

~~Board form(s) are available on the board's web site or upon request for your use-~~

~~(3) Processing of your application cannot begin until all the required information, applicable fees, and required documentation or other documentation or information the board may deem necessary is received by the board. When the processing), documents, and fees to the board either by making application through the board's on-line application system or on a form provided upon request. You must provide all requested information, documents and fees to the board before the application will be evaluated.~~

~~(3) Upon assessment of your qualifications and approval of your application ((is complete)), your ((license)) licensed status will be ((mailed to your address of record with the board)) posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.~~

~~(4) Your initial license will expire on June 30 of the third calendar year following initial licensure.~~

~~(5) You may not use the title CPA until the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.~~

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-746 How do I apply for a Washington state CPA license if I hold a valid CPA license in another

state? (~~Pursuant to RCW 18.04.180 and 18.04.215(6) the board may issue an individual license through interstate reciprocity if you hold a CPA license to practice public accounting issued by another state provided your state of licensure makes similar provisions for granting reciprocity to holders of a valid certificate or license in this state.~~)

(1) To qualify to apply for an individual Washington state license (~~(entitling you to use the title CPA and/or offer or render compilation, or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state under the interstate reciprocity provisions)~~) by reciprocity you must:

(a) Hold a license to practice public accounting issued by a state that makes a similar provision for holders of a license issued by this state:

(b) Meet the good character requirements of RCW 18.04.105 (1)(a);

~~((b))~~ (c) Meet the CPE requirements in WAC (~~4-25-830~~) 4-30-134; and

~~((c))~~ (d) You must have:

(i) Passed the examination required for issuance of your certificate or license in the other state with grades that would have been passing grades at that time in this state and:

(ii) Met all current requirements for licensure at the time you apply; or

(iii) Met, at the time of the issuance of your license in the other state, all the requirements applicable at that time to obtain a license in this state; or

(iv) Had five years of experience in the practice of public accounting within the ten years immediately preceding your filing an application for licensure in this state; or

(v) Had three years of experience in the practice of public accounting within the five years immediately preceding your filing an application for licensure in this state; or

(2) The board may accept NASBA's designation of the applicant as substantially equivalent to national standards as meeting the requirements of subsection (1)~~((c))~~ (d) of this section.

(3) (~~To apply for a license under the reciprocity provisions you must submit to the board's office information that you are qualified for reciprocity as outlined in subsections (1) and (2) of this section.~~) You must provide all required information, documents, and fees to the board either by making application through the board's on-line application system or on a form provided by the board upon request. You must provide all requested information, documents, and fees to the board before the application will be evaluated, including a certification that you(:

~~(a))~~ have not held out in public practice during any time prior to submitting your application unless expressly permitted by then existing board rule (~~(then existing); and~~

~~(b) Have met the CPE requirements in WAC 4-25-830.~~

~~Board form(s) are available on the board's web site or upon request for your use.~~

~~(4) An initial application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation or information the board may deem necessary is received by the board.~~

~~(5) At date of approval of your application, it will be posted in the board's licensee data base and, therefore, made publicly available for confirmation.~~

~~(6) Your license will be mailed to the address of record with the board provided at the time of your application, or subsequently changed by formal notice to the board).~~

~~((7))~~ (4) Provided no sanctions or investigations by other jurisdictions are in process and you have met the requirements for applying for licensure through interstate reciprocity, (~~(upon filing a completed application with the board,)~~) you may use the CPA title in Washington state upon submission of a complete application to the board.

(5) Upon evaluation of your qualifications and approval of your application your licensed status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

~~((8))~~ (6) Your (~~(initial)~~) reciprocal license will expire on June 30 of the third calendar year following (~~(initial)~~) the date of licensure.

~~((9))~~ (7) You must notify the board within thirty days if your license or certificate issued by the other jurisdiction has lapsed or otherwise become invalid.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-747 Must an out-of-state individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? No. Out-of-state individuals holding valid licenses to practice public accounting issued by a substantially equivalent state, may hold out and practice within Washington state and/or provide public accounting services in person, by mail, telephone, or electronic means to clients residing in Washington state without notice or payment of a fee.

As a condition of this privilege, the out-of-state individual is deemed to have consented to:

(1) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(2) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules, chapter 4-25 WAC;

(3) The appointment of the state board which issued the certificate or license as their agent upon whom process may be served in any action or proceeding by this state's board against the certificate holder or licensee;

(4) Render the following services for a client with a home office in this state only through a firm that has obtained a license from this state (RCW 18.04.195, 18.04.205 and WAC (~~4-25-750~~) 4-30-110):

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(c) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(5) Not render any professional services in this state unless the out-of-state individual is licensed to render such services in the state of licensure upon which the privilege is contingent;

(6) Cease offering or performing professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is no longer valid; and

(7) Cease offering or performing specific professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is restricted from offering or performing such specific professional services.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-750 What are the ~~((CPA firm licensing))~~ allowable legal forms of organization and ownership requirements for a CPA firm? (1) ~~((How may a CPA firm be organized?))~~ **Permitted forms of organization.** A CPA firm may be organized as:

- (a) A proprietorship;
- (b) A partnership;
- (c) A professional corporation (PC) or professional service corporation (PS);
- (d) A limited liability company (LLC);
- (e) A limited liability partnership (LLP); or
- (f) Any other form of legal entity authorized by Washington state statute for use by a CPA firm.

(2) **What happens when a CPA firm alters its legal form?** A mere change in the legal form of ~~((a))~~ an existing firm constitutes a new firm for licensing purposes. Accordingly, the new entity must first obtain a CPA firm license from the board and then dissolve the former firm unless the owners desire to maintain more than one licensed firm. Affiliated entities using a restricted title or offering or performing restricted services are subject to board rules.

(3) **What are the ownership requirements for a CPA firm?**

- (a) All owners of a licensed CPA firm are required to:
 - (i) Fully comply with the provisions of chapter 18.04 RCW; and
 - (ii) Be subject to discipline by the board for violations of chapter 18.04 RCW or 4-25 WAC;
- (b) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners, owners, or shareholders must be:
 - (i) Licensees in this state or holders of a valid license to practice public accountancy issued by another state;
 - (ii) Entitled to practice public accounting in Washington state; and
 - (iii) Principally employed by the ~~((corporation))~~ firm or actively engaged in its business.
- (c) At least one general partner of a partnership, one shareholder of a corporation, and one member of a limited liability company must be a licensee.
- (d) Each CPA proprietor, partner, shareholder or member who is either a resident or is entering the state and prac-

ting public accountancy in this state must hold a valid Washington state license or practice privileges.

~~((The))~~ A principal ~~((partner of the partnership))~~ owner and any ~~((partner))~~ individual having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accounting in this state.

~~((The principal officer of the corporation and any officer or director having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.~~

~~((g))~~ The managing member of a limited liability company and any member having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.

~~((h))~~ A nonresident CPA owner must be licensed to practice public accountancy in at least one state.

~~((i))~~ (g) A nonlicensee owner must:

- (i) Be an individual;
- (ii) Meet the good character requirements of RCW 18.04.105 (1)(a);
- (iii) Comply with the act and board rules; and
- (iv) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC ~~((4-25-410))~~ 4-30-010; and

~~((j))~~ (h) A resident nonlicensee firm owner must meet the requirements of WAC ~~((4-25-752))~~ 4-30-116 and register with the board concurrent with submission of the firm license application, or submission of an amendment to the firm license status, to the board.

(4) **What are the requirements for the firm's main office and a branch office?** A firm's main office located in this state must be under the direct supervision of a resident licensee.

A branch office is an office of a licensed CPA firm which is physically separated from the main office. A branch office operates under the license of the main office.

~~((5))~~ **How does a firm apply for an initial firm license?** To apply for an initial firm license an owner, or designee, must submit or, in the case of an out-of-state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application must submit the following information, all applicable fees, and such other information the board deems necessary to the board's office:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office located and maintained in this state;
- (d) Resident licensee owners' names;
- (e) Name(s) of all nonlicensee owners; and
- (f) Type of legal organization under which the firm operates.

Board form(s) are available from the board's web site or upon request for your use.

An initial application is not complete and cannot be processed until all fees, required information described in subsection (5) of this section, or other documentation or information the board may deem necessary is received by the board. On the date the application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the approval of the firm's license will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.

The initial CPA firm license will expire on June 30 of the third calendar year following initial licensure.

(6) How do I renew a CPA firm license? To renew a CPA firm license an owner or designee or, in the case of an out of state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application, must submit the information described in subsection (5) of this section that is current at the date the renewal application is submitted to the board. A renewal application is not complete and cannot be processed until all fees, required information, and required documentation, and other documentation deemed necessary by the board are received by the board.

Board form(s) are available from the board's web site or upon request for your use. Failure to file a complete application for renewal of a firm license by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on reasonable cause including, but not limited to, financial hardship, critical illness, or active military deployment.

On the date the renewal application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the validity of the renewed firm's license status will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.

The CPA firm license will expire on June 30 of the third calendar year following the date of renewal.

(7) When and how must the firm notify the board of changes in the licensed firm? An individual authorized by the firm must provide the board written notification and other documentation deemed necessary by the board within ninety days of any or all of the following occurrences:

- (a) Dissolution of the firm;
- (b) The occurrence of any event that would cause the firm to be in violation of RCW 18.04.195 or this rule; or
- (c) An event that requires an amendment to a firm license.

(8) What events require a firm amendment? An individual authorized by the firm must provide written notification to the board, by submitting the following information and the appropriate amendment fee, within ninety days of the following:

- (a) Admission or departure of an owner;
- (b) Any change in the name of the firm; or

(e) Change in the resident managing licensee of the main office in this state.

(9) How long do I have to correct noncompliance with licensure requirements due to a change in ownership or an owner's credentials? An individual authorized by the firm must notify the board within ninety days of any change in ownership or lapse of an owner's license, certificate, registration or practice privilege that has caused the firm's license to be out of compliance with licensure requirements and must correct the noncompliance within ninety days of the lapse, unless the board grants a longer time period due to reasonable cause including, but not limited to, financial hardship, critical illness, or active military deployment.)

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-752 How do I initially register to be a resident nonlicensee owner of a licensed firm and with which rules must a nonlicensee firm owner comply? To qualify as a nonlicensee owner of a licensed firm, you must:

- (1) Be an individual;
- (2) Meet the good character requirements of RCW 18.04.105 (1)(a);
- (3) ~~((Comply with the act and board rules;~~
- (4)) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC ~~((4-25-410))~~ 4-30-010; and
- ~~((5))~~ (4) If you are a resident of Washington state, you must:
 - (a) ~~((File a complete registration with the board))~~ Provide all required information, documents, and fees to the board either by registering through the board's on-line application system or on a form provided upon request; and
 - (b) ~~((Demonstrate))~~ Achieve and document a passing grade of ninety percent or better on ~~((the AICPA professional ethics examination))~~ a course covering the complete content of the AICPA Code of Professional Conduct.

~~((You must))~~ (c) Submit your registration concurrent with or prior to submission of the firm license application or firm license amendment~~((, pursuant to WAC 4-25-750))~~ by the firm with which you are associated.

An initial registration is not complete and cannot be processed until all ~~((fees, required documentation,))~~ required information, ~~((and other information deemed necessary by the board are received by))~~ documents, and fees are submitted to the board.

If you are a Washington state resident, you may not hold ownership interest in a CPA firm licensed in Washington state until you receive written notice from the board of your Washington state registration number. On the date the registration is approved, your registration number will be included in the board's licensee data base and, therefore, made publicly available for confirmation. ~~((Confirmation of the approval of your initial registration will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.))~~ A hard copy of your registration can be provided upon request.

Your initial registration will expire on June 30 of the third calendar year following initial issuance of the registration.

If you withdraw as a nonlicensee owner of a CPA firm, the firm must notify the board. Your registration as a nonlicensee firm owner will lapse and be subject to reinstatement.

All nonlicensee firm owners are subject to discipline for violation of the act or board rules.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-753 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? (1) A firm license must be obtained from the board if any of the following criteria apply:

(a) The firm has an office in this state and performs attest or compilation services for clients in this state;

(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants; or

(c) The firm is licensed in another state and performs the following services for clients with a home office in this state:

(i) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(ii) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(iii) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(2) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC ((4-25-747)) 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(3) As a condition of this privilege, the nonresident firm is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules, chapter 4-25 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business

of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1)(c) of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

AMENDATORY SECTION (Amending WSR 01-22-036, filed 10/30/01, effective 12/1/01)

WAC 4-25-781 What are the rules governing reciprocity for accountants from foreign countries? (1) Under the authority provided by RCW 18.04.183, the board may rely on the National Association of State Boards of Accountancy, the American Institute of Certified Public Accountants, or other professional bodies for evaluation of foreign accounting credential equivalency.

(2) Your foreign accounting credential may be accepted in partial satisfaction of licensing requirements if:

(a) You met the foreign issuing body's education, examination, and ethical requirements used to qualify its domestic candidates;

(b) Your foreign accounting credential is valid and in good standing at the time you apply for a Washington state license; and

(c) The foreign issuing body granting your foreign accounting credential permits Washington CPAs an equivalent opportunity to receive the foreign accounting credential by reciprocity.

(d) You demonstrate satisfactory experience within the eight years prior to submitting your application in ((a foreign or domestic professional accounting firm. The board will, by policy, specify experience standards for each foreign accounting credential accepted by the board)) public accounting or other experience meeting the requirements of RCW 18.04.105 (1)(d).

The board will, by policy, identify acceptable foreign accounting credentials and acknowledge reciprocal agreements with bodies granting foreign accounting credentials.

(3) The board may require a qualifying examination(s) to determine if you possess adequate knowledge of U.S. practice standards and the board's regulations. The board will, by policy, specify the form of qualifying examination(s) and passing grade(s).

(4) You must:

(a) Meet the CPE requirements of WAC ((4-25-830)) 4-30-134 for subsequent renewal of an initial license issued pursuant to the board's authority; and

(b) Achieve and document a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct.

(5) If you hold a Washington state CPA license or certificate issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within thirty days of your receiving notice that an investigation has begun or a sanction was imposed.

(6) If you hold a Washington state license or certificate issued through the foreign reciprocity provisions of the act, you must notify the board within thirty days if your foreign license, permit, or certificate has lapsed or otherwise becomes invalid.

AMENDATORY SECTION (Amending WSR 09-01-166, filed 12/23/08, effective 1/23/09)

WAC 4-25-782 How do I apply for an initial Washington state license through foreign reciprocity? (~~Pursuant to RCW 18.04.183 the board may issue a license through foreign reciprocity provided you meet the requirements for application through foreign reciprocity established by the act, WAC 4-25-781 and 4-25-830(7-).~~)

To apply for an initial Washington state CPA license through foreign reciprocity, you must (~~use the foreign reciprocity application~~) provide all required information, documents, and fees to the board either by making application through the board's on-line application system or on a form(~~(s)~~) provided by the board upon request.

You (~~need to fully complete the form(s), and submit the form(s), all applicable fees, required~~) must provide all requested information, (required documentation) documents, (or other documentation deemed necessary by) and fees to the board (to the board's office) before the application will be evaluated.

(~~An application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation deemed necessary by the board are received by the board. When the processing of your application is complete.~~) Upon assessment of your qualifications and approval of your application, your license status will be (mailed to the last address you provided to the board) posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

Your Washington state CPA license will expire on June 30 of the third calendar year following the calendar year of initial licensure.

You may not use the title CPA until (~~you have received notice from the board that your Washington state license has been approved~~) your status has been posted to the board's licensee data base and, therefore, made available to the public.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-783 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity? (~~In January of the year of expiration, a renewal form will be mailed to the last address you provided to the board.~~) You must provide all required information,

documents, and fees to the board either by making application through the board's on-line application system or on a form provided by the board upon request.

To renew your individual license or CPA-Inactive certificate originally granted through foreign reciprocity, you must (~~submit to~~) provide the board by April 30th of the year of expiration a renewal application including:

(1) (~~A completed renewal application form including:~~

(a)) Your certification that you have complied with the CPE requirements of WAC (~~(4-25-830)~~) 4-30-134(1) and the supporting documentation requirements of WAC (~~(4-25-833; and~~

(b)) 4-30-138;

(2) All requested documentation (from the foreign issuing body certifying:

(i) Your foreign credential is in good standing and valid for the practice of public accountancy in the foreign jurisdiction; and

(ii) You are not currently under disciplinary investigation or action; or

(iii) If you are currently under disciplinary investigation or action, a statement as to the nature of the allegations; and

(e) If you no longer hold the foreign credential used to qualify for a Washington state CPA license and/or certificate, you must submit documentation from the foreign issuing body certifying that you were not the subject of any investigations or disciplinary proceedings at the time the foreign credential lapsed.

(2)); and

(3) All applicable fees(; and

(3) All required documentation.

A renewal application is not complete and cannot be processed until all fees, required)

You must provide all requested information, (required documentation, or other documentation deemed necessary by the board is received by) documents, and fees to the board before the application will be evaluated.

Upon (completion of processing, your individual license or confirmation of your CPA-Inactive certificate renewal will be mailed to the last address you provided to the board) assessment of your continued qualifications and approval of your application, your renewed status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

An individual license or CPA-Inactive certificate renewal expires on June 30 of the third calendar year following the calendar year of renewal.

Failure to file a complete application for an individual license or CPA-Inactive certificate renewal by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship.

If you fail to file a complete application for individual license or CPA-Inactive certificate renewal by June 30 of the year of expiration, your individual license or CPA-Inactive certificate will lapse.

If you are a CPA-Inactive certificate holder and are renewing your CPA-Inactive certificate, as a CPA-Inactive you are prohibited from using the title CPA or certified public

accountant. You are prohibited from practicing public accountancy. You must use the title CPA-Inactive and print or display the word "Inactive" immediately following the title CPA or certified public accountant whenever the initials CPA or certified public accountant is printed on a business card, letterhead, or other document including documents published or transmitted through electronic media, in exactly the same font and font size as the title CPA or certified public accountant.

If your individual license or CPA-Inactive certificate has lapsed, you may not use the title CPA or CPA-Inactive.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-790 How do I renew my individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? A licensee may not renew as a CPA-Inactive certificate holder.

To renew your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must ~~((use the))~~ by April 30th of the year of expiration make application through the board's on-line application system or on a form((s)) provided by the board ((and satisfy CPE requirements in WAC 4-25-830(1)). In January of the year of expiration, a renewal form will be mailed to the last address you provided to the board.

~~To renew your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must submit to the board by April 30th of the year of expiration)) upon request and provide the board with:~~

(1) ~~((A))~~ Complete renewal ((form)) information including:

(a) Your certification that you have complied with the CPE requirements of WAC ~~((4-25-830))~~ 4-30-134(1) and the supporting documentation requirements of WAC ((4-25-833)) 4-30-138; and

(b) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or permit to practice;

(2) All required documentation, required information, and other documentation deemed necessary by the board; and

(3) All applicable fees(, and

~~(3) All required documentation, required information, and other documentation deemed necessary by the board.~~

~~A licensee may not renew as a CPA-Inactive certificate holder).~~

A renewal ~~((form))~~ application is not complete and cannot be processed until all ((fees,)) required information, ((required documentation, and other documentation deemed necessary by the board)) documents, and all applicable fees are ((received by)) submitted to the board. ((Upon completion of processing, confirmation of your individual license, CPA-Inactive certificate renewal, or registration as a resident nonlicensee firm owner will be mailed to the last address you provided to the board.))

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee data base and, therefore, made publicly

available for confirmation. A hard copy of your credential can be provided upon request.

An individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner renewal expires on June 30 of the third calendar year following the calendar year of renewal.

Late renewal application: Failure to file a complete application for renewal ((form for)) of an individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

Failure to file a renewal application: If you fail to file a complete application for renewal ((form for)) of an individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner by June 30 of the year of ((expiration)) renewal, your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner will lapse.

Failure to Complete CPE: If you did not complete the credit hours of continuing professional education (CPE) required to renew your credential or did not submit a timely extension request and/or was not granted an extension of time for reasonable cause within which to complete the deficiency, your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner will lapse on June 30th of the year of renewal.

Lapsed credentials: A lapsed credential is subject to reinstatement.

If your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) ((CPA)) or exercise other privileges that are dependent upon the renewal of ((the license)) your credential.

~~((If your CPA-Inactive certificate has lapsed, you may not use the title CPA-Inactive or exercise other privileges that are dependent upon the renewal of the certificate.))~~

AMENDATORY SECTION (Amending WSR 09-01-166, filed 12/23/08, effective 1/23/09)

WAC 4-25-791 I am a CPA-Inactive certificate holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee? CPA-Inactive certificate holders who held a license at any time prior to July 1, 2001, may apply to return to their previous status as a licensee. If you are a CPA-Inactive certificate holder, you may not use the title "CPA" or "Certified Public Accountant" until you return to your previous status as a licensee.

If you hold a valid CPA-Inactive certificate, ~~((to apply to return to your previously held status as a licensee, you must use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(5)))~~ you must provide certain information to the board either by making application through the board's on-line application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, required

documentation, fees, and other documentation deemed necessary by the board are ~~((received by))~~ submitted to the board.

To apply to return to your previous status as a licensee you must submit to the board:

(1) ~~((A))~~ Complete application ~~((form))~~ information including your certification~~((, under the penalty of perjury;))~~ that you have:

(a) Not held out in public practice during the time in which you were a CPA-Inactive certificate holder; and

(b) Met the CPE requirements of WAC ~~((4-25-830))~~ 4-30-134(5);

(2) All other required ~~((documentation, required))~~ information, ~~((and other documentation deemed necessary by the board))~~ documents, and all fees.

Upon ~~((approval of your application, your license will be mailed to the last address you provided to the board))~~ assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

You may not use the title CPA until ~~((you receive notice from))~~ your status as a licensee is posted in the ~~((board that your CPA license has been approved))~~ board's licensee data base.

AMENDATORY SECTION (Amending WSR 09-01-166, filed 12/23/08, effective 1/23/09)

WAC 4-25-792 How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? If your individual license ~~((or)),~~ CPA-Inactive certificate, or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) ~~((CPA or CPA-Inactive))~~ until your individual ~~((license or CPA-Inactive certificate is))~~ credential has been reinstated by the board.

Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.

~~((If your registration as a resident nonlicensee firm owner has lapsed, you may not be an owner of a CPA firm until your registration is reinstated by the board.))~~

To reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a nonlicensee firm owner you must ~~((use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(6). An application is not complete and cannot be processed until all fees, required information, required documentation, and other documentation deemed necessary by the board are received by the board))~~ provide certain information to the board either by making application through the board's on-line application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) ~~((A))~~ Complete reinstatement ~~((form))~~ information including your certification~~((, under the penalty of perjury;))~~ that you have:

(a) *For those who wish to reinstate a license or CPA-Inactive certificate:* Not used the title CPA or CPA-Inactive during the time in which your individual license or CPA-Inactive certificate was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC ~~((4-25-830))~~ 4-30-134(6); and

(d) Met the CPE supporting documentation requirements in WAC ~~((4-25-833))~~ 4-30-138;

(2) Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC ~~((4-25-833))~~ 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) ~~((All applicable fees))~~ Other required documents; and

(5) ~~((Other required documents, required information, and other documentation deemed necessary by the board.))~~ All applicable fees.

Upon approval of your reinstatement~~((, notice that your license, registration as a resident nonlicensee firm owner, or CPA-Inactive certification has been reinstated))~~ application, your status will be ~~((mailed to the last address you provided to the board))~~ posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1 of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner was approved by the board and ends on December 31 of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for ~~((this CPE reporting period))~~ subsequent renewal of your reinstated credential.

You may not use the ~~((title CPA or CPA-Inactive))~~ restricted title(s) until your reinstatement application has been approved and posted to the board's data base.

AMENDATORY SECTION (Amending WSR 09-01-166, filed 12/23/08, effective 1/23/09)

WAC 4-25-793 If I retire my license or CPA-Inactive certificate, how do I apply to ~~((return to my previous status as a licensee))~~ renew my license or a CPA-Inactive certificate ~~((holder))~~ out of retirement? If you ~~((notified))~~ notify the board that you wish to retire your license or CPA-Inactive certificate prior to the end of your renewal cycle, pursuant to RCW 18.04.215~~((7))~~, you may renew your license or CPA-Inactive certificate out of retirement at a later

date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you (~~return to your previous status~~) renew out of retirement.

If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.

To apply to (~~return to your previously held status as either a licensee~~) renew a license or a CPA-Inactive certificate (~~holder~~) out of retirement, you must (~~use the form(s) provided by the board and satisfy CPE requirements in WAC 4-25-830(4)~~) provide certain information to the board either by making application through the board's on-line application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all (~~fees;~~) required information, (~~required documentation, or other documentation deemed necessary by the board are received by the board.~~

~~If you previously held a license, you are not eligible to apply for CPA Inactive certificate holder status~~) documents, and fees are submitted to the board.

To apply to (~~return to your previous status~~) renew out of retirement, you must submit to the board:

(1) (~~(A)~~) Complete application (~~form~~) information including your certification(~~, under the penalty of perjury,~~) that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license or CPA-Inactive certificate was retired; and

(b) Met the CPE requirements to (~~return to your previous status~~) renew out of retirement in WAC (~~(4-25-830)~~) 4-30-134(4); and

(2) All applicable fees(~~; and~~

~~(3) Other required documentation, required information, or other documentation deemed necessary by the board~~)).

Upon (~~approval of your application, your license or notification of~~) assessment of your continued qualifications and approval of your application, your status (~~as a CPA-Inactive certificate holder~~) will be (~~mailed to the last address you provided to the board~~) posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license or CPA-Inactive certificate will expire on June 30th of the third calendar year following (~~approval~~) the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1 of the calendar year in which the renewal of your retired license or CPA-Inactive certificate was approved by the board and ends on December 31 of the second calendar year following approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license or CPA-Inactive certificate cannot be utilized for (~~this CPE reporting period~~) subsequent renewal of your credential renewed out of retirement.

You may not use the title CPA or CPA-Inactive until your renewal out of retirement application has been approved.

AMENDATORY SECTION (Amending WSR 09-01-166, filed 12/23/08, effective 1/23/09)

WAC 4-25-795 How do I reinstate a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? If your license or CPA-Inactive certificate was revoked or suspended by the board pursuant to the act, you may not use the title CPA or CPA-Inactive until your license or CPA-Inactive certificate is reinstated by the board.

If your registration as a resident nonlicensee firm owner was revoked or suspended by the board pursuant to the act, you may not be a firm owner until your registration is reinstated by the board.

You may request that the board modify the suspension or revocation after three years have elapsed from the effective date of the board's order revoking or suspending your license (~~(or)~~) CPA-Inactive certificate, or registration as a resident nonlicensee firm owner unless the board sets some other period by order. However, if you made a previous request with respect to the same order, no additional request will be considered before the lapse of an additional three years following the board's decision on the last such previous application for reinstatement.

To request reinstatement of a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner you must (~~use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(6)~~) provide the board with certain information either by making application through the board's on-line application system or on a form provided by the board upon request. (~~A request~~) An application is not complete and cannot be processed until all (~~fees;~~) required information, (~~required documentation~~) documents, and (~~other documentation deemed necessary by the board are received by~~) fees are submitted to the board.

To request reinstatement, you must submit to the board:

(1) (~~(A)~~) Complete (~~reinstatement form~~) information including your certification (~~under the penalty of perjury,~~) that you have:

(a) *For those who wish to reinstate a license or CPA-Inactive certificate:* Not used the title CPA during the time in which your license or CPA-Inactive certificate was suspended or revoked; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC (~~(4-25-830(6); and~~

~~(d) Met the CPE supporting documentation requirements in WAC 4-25-833~~) 4-30-134(6), by submitting the documentation to support the CPE claimed;

(2) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, CPA-Inactive certificate, permit, or practice privilege under substantial equivalence;

(3) All applicable fees;

(4) ~~((Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-25-833;~~

~~(5))~~ Written substantiation of the reasons constituting good cause for the reinstatement; and

~~((6))~~ (5) Two supporting recommendations~~((under penalty of perjury;))~~ from licensees who have personal knowledge of your activities since the suspension or revocation was imposed~~((and~~

~~(7) Other required documentation, required information, and other documentation deemed necessary by the board)).~~

In considering the reinstatement application, the board may consider all relevant factors, including but not limited to:

(a) The offense for which you were disciplined;

(b) Your activities since the disciplinary penalty was imposed;

(c) Your activities during the time the license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner was in good standing;

(d) Your rehabilitative efforts;

(e) Restitution to damaged parties in the matter for which the penalty was imposed; and

(f) Your general reputation for ~~((truth and professional ethics))~~ integrity, objectivity, and ethical commitment.

If the board decides to consider the merits of your application for reinstatement, in the board's discretion, a hearing may be held following such procedures as the board deems suitable for the particular case. If the board decides that it will not consider the merits of your application for reinstatement, then this constitutes final agency action and there is no further administrative review available to you. As a condition of reinstatement, the board may impose such terms and conditions as it deems suitable.

The board will not consider a request for reinstatement while you are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole.

~~((Upon approval of))~~ If the board approves your application, your ((license, notification of your)) status ((as a CPA-Inactive certificate holder, or registration as a resident nonlicensee firm owner)) will be ((mailed to the last address you provided to the board)) posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your reinstated credential can be provided upon request.

Your reinstated license, CPA-Inactive certificate, or registration will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1 of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration was approved by the board and ends on December 31 of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement of a license, CPA-Inactive certificate, or registration cannot be utilized for ~~((this CPE reporting period))~~ subsequent renewal of your credential.

You may not use the title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident nonlicensee firm owner until your reinstatement application has been approved.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-820 What are the requirements for participating in quality assurance review (QAR)? (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with audit, compilation, review, and other attestation standards.

(2) Out-of-state firms otherwise qualified for practice privileges under RCW 18.04.195 (1)(b) are ~~((responsible for compliance with this section. These firms are exempt from the registration requirements set forth in this section))~~ not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

(3) **Structure and implementation.** ~~((a))~~ The board will annually appoint a quality assurance review committee ~~((to perform))~~ co-chaired by a current or former board member and an individual selected by the board from the other committee members. The committee shall direct the following functions:

~~((i))~~ Review (a) Evaluation of financial statements and the reports of licensees thereon to assess their compliance with applicable professional standards;

~~((ii))~~ Review (b) Evaluation of licensees' reports and on other information covered by those reports for conformity with applicable professional standards;

~~((iii))~~ (c) Improvement of reporting practices of licensees through education and rehabilitative measures; ~~and~~

~~((iv))~~ (d) Evaluation of licensees' peer review reports; and

(e) Such other functions as the board may assign to the committee.

~~((b))~~ (4) **Process.**

(a) Once every three years the board requires a licensed firm with an office in this state to participate in the board's quality assurance review program. Participating firms will be required to submit ~~((a))~~ quality assurance review status ~~((form))~~ information, along with the appropriate fee, by the following April 30th.

Failure to timely submit ~~((a))~~ complete quality assurance review status ~~((form))~~ information and the related fee post-marked by the April 30th due date, ~~((with))~~ can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

~~((e))~~ (b) Participating firms may request exemption from the requirements of (e) of this subsection if within the three years immediately preceding the date of board request:

(i) The firm has not issued any attestation or compilation reports; or

(ii) The firm has participated in a board-approved peer review program. The board has approved:

(A) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);

(B) Peer review programs administered by the American Institute of CPAs (AICPA); and

(C) Peer review programs administered by the Washington Society of CPAs (WSCPA).

(c) Participating firms requesting exemption based on peer review must submit a copy of the peer review report, response to the peer review report, if applicable, and letter of acceptance from the reviewing organization. Firms that fail a peer review may request exemption, but must submit a copy of the peer review report and related correspondence, at the discretion of the board, for consideration on an individual basis.

(d) Each participating firm shall submit, for each of its offices, one licensee report and the information covered by that report, for each of the following types of service or any other service the board determines:

- (i) Compilation report on historical financial statements;
- (ii) Review report on historical financial statements;
- (iii) ~~(Audit report on historical financial statements;~~
- ~~(iv))~~ Agreed-upon procedures;
- ~~((v))~~ (iv) Forecasts;
- ~~((vi) Internal controls;~~
- ~~(vii) Performance audits;))~~ and
- ~~((viii))~~ (v) Projections.

~~((d))~~ (e) Firms issuing audit reports on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises must participate in a board-approved peer review program administered by the American Institute of CPAs (AICPA) or the Washington Society of CPAs (WSCPA).

(f) A participating firm shall select these reports from all reports prepared during the twelve months preceding the date of board request or, if no reports have been issued within the last twelve months, from all reports during the preceding three years.

~~((e))~~ (g) If reports issued by all offices of a firm are reviewed and issued in a controlled, centralized process, only one each of the type of licensee reports, including the information covered by the reports, specified above need be submitted by the firm as a whole.

~~((f) The board may exempt from the requirement of (e) of this subsection any firm that has participated in a board-approved peer review program within the three years immediately preceding the date of board request.~~

~~(g) Firms requesting exemption must submit a copy of an unmodified report, letter of comments, response to letter of comments, if applicable, and letter of acceptance from the reviewing organization. Firms that receive modified peer review reports may request exemption, but must submit copies of such reports and related correspondence, at the discretion of the board, for consideration on an individual basis;))~~

(h) Any documents submitted in accordance with ~~((e))~~ (d) of this subsection may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the entity undeterminable. Dates may not be omitted.

(i) Reports submitted to the committee pursuant to ~~((e))~~ (d) of this subsection and comments of reviewers, the committee and the board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the

extent that they are communicated by the board to the licensees who issued the reports or disclosure is required under administrative procedure rules or by direction of a court of law.

(j) The committee's ~~((review))~~ evaluation of the licensee reports and other information covered by those reports shall be directed toward the following:

(i) Presentation of the financial statements covered by the licensee reports and/or other information covered by those reports in conformity with applicable professional standards for presentation and disclosure;

(ii) Compliance by licensees with applicable reporting standards; and

(iii) Compliance by licensees with the rules of the board and other regulations relating to the practice of public accounting.

~~((4))~~ **(5) Remedies.** If the board determines that a report and/or other information covered by the report referred to the board by the committee is substandard or seriously questionable with respect to applicable professional standards, the board may take one or more of the following actions:

(a) Send the licensee a letter of comment detailing the perceived deficiencies and require the licensee to develop quality control procedures to ensure that similar occurrences will not occur in the future;

(b) Require any licensee who had responsibility for issuance of a report, or who substantially participated in preparation of the report and/or related workpapers, to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the licensee responsible for a substandard report submit all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the board. The cost of the preissuance review will be at the firm's expense;

(d) Require the licensee responsible for a substandard report to submit to a peer review conducted in accordance with standards acceptable to the board. The cost of the peer review will be at the licensee's expense;

(e) Require the licensee responsible for substandard work to submit to on-site field review or other investigative procedures of work product and practices by board representatives in order to assess the degree or pervasiveness of substandard work. The board may assess the costs of such field review or procedures to the licensee if the results of such investigative efforts substantiate the existence of substandard work product;

(f) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.

~~((5))~~ **(6)** The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

AMENDATORY SECTION (Amending WSR 09-17-044, filed 8/11/09, effective 9/11/09)

WAC 4-25-830 What are the CPE requirements for individuals? (1) The following CPE is required for individuals during the three calendar year period prior to renewal:

(a) An individual licensed to practice in this state must complete a total of 120 CPE hours, including 4 CPE credit hours in an approved Washington ethics and regulations course meeting the requirements of subsection (3) of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE credit hours in nontechnical subject areas. All qualifying CPE hours must be taken after the date your initial CPA license was issued;

(b) A CPA-Inactive certificate holder or a resident nonlicensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section; and

(c) Individuals holding practice privileges are exempt from the CPE requirements of this section.

(2) **CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificate holder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(3) **Ethics and regulations applicable to practice in Washington state:** During each CPE reporting period all individuals licensed in this state, individual CPA-Inactive certificate holders in this state, and resident nonlicensee firm owners are required to complete 4 CPE credit hours in approved ethics and regulations with specific application to the practice of public accounting in Washington state. In order to be approved by the board, the CPE sponsor or instructor must submit documentation associated with the ethics and regulations CPE to the board for approval and the sponsor or instructor must obtain written approval from the board. The ethics and regulations CPE must cover all of the following topics, and the ethics and regulations CPE must substantially address these topics:

(a) Chapter 18.04 RCW and chapter 4-25 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

(b) WAC (~~(4-25-521)~~) 4-30-026 How can I contact the board?

(c) WAC (~~(4-25-550)~~) 4-30-032 Do I need to notify the board if I change my address?

(d) WAC (~~(4-25-551)~~) 4-30-034 Must I respond to inquiries from the board?

(e) WAC (~~(4-25-600 Series—)~~) 4-30-040 through 4-30-048 Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

(f) WAC (~~(4-25-800)~~) 4-30-103 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

(g) WAC (~~(4-25-910)~~) 4-30-142 What are the bases for the board to impose discipline?

(h) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW and chapter 4-25 WAC) and the AICPA Code of Conduct.

(j) Other topics or information as defined by board policy.

(4) **CPE requirements to renew a (~~retired~~) license or CPA-Inactive certificate out of retirement:**

(a) In order to renew a (~~retired~~) license out of retirement, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application (~~is received by~~) is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application (~~was received by~~) is submitted to the board.

(b) In order to renew a (~~retired~~) CPA-Inactive certificate out of retirement, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application (~~was received by~~) is submitted to the board.

(5) **CPE requirements for a CPA-Inactive certificate holder to either qualify to apply for a license or return to their previously held status as a licensee:** If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is (~~received by~~) is submitted to the board.

(6) **Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:**

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement (~~was received by~~) is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement (~~was received by~~) is submitted to the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement (~~(was received by)~~) is submitted to the board.

(7) **Reciprocity:** If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date your application (~~(was received by)~~) is submitted to the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8) **CPE extension request:** In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by the end of the CPE reporting period preceding your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause. The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by the end of the CPE reporting period. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

AMENDATORY SECTION (Amending WSR 09-17-044, filed 8/11/09, effective 9/11/09)

WAC 4-25-831 What are the program standards for CPE? (1) **Qualifying program:** A program qualifies as acceptable CPE for purposes of RCW 18.04.215(5) if it is a formal program of learning which contributes to the CPA's professional knowledge and competence. A formal program means:

- The program is at least fifty minutes in length;
- Attendance is recorded;
- Participants sign in to confirm attendance and, if the program is greater than four credit hours, participants sign out during the last hour of the program; and
- Attendees are provided a certificate of completion.

(2) **Undergraduate and graduate courses:** A graduate or undergraduate course qualifies for CPE credit if it meets the standards in subsections (1) and (5) of this section. For both undergraduate and graduate courses one quarter credit equals 10 CPE credit hours and one semester credit equals 15 CPE credit hours.

(3) **Committee meetings:** Generally, CPE credit is not allowed for attending committee meetings. A meeting qualifies for CPE credit only if it meets the standards in subsections (1) and (5) of this section.

(4) **CPE credit hours for volunteer service on the board and its committees and volunteer service on board**

approved peer review committees: You may receive up to thirty-two hours of technical CPE credit each calendar year for actual time spent on board, board committee, or board approved peer review committee activities.

(5) **Subject areas:** Programs dealing with the following general subject areas are acceptable so long as they meet the standards in subsection (1) of this section:

(a) **Technical subjects include:**

- (i) Auditing standards or procedures;
- (ii) Compilation and review of financial statements;
- (iii) Financial statement preparation and disclosures;
- (iv) Attestation standards and procedures;
- (v) Projection and forecast standards or procedures;
- (vi) Accounting and auditing;
- (vii) Management advisory services;
- (viii) Personal financial planning;
- (ix) Taxation;
- (x) Management information services;
- (xi) Budgeting and cost analysis;
- (xii) Asset management;
- (xiii) Professional ethics (other than those programs used to satisfy the requirements of WAC (~~(4-25-830)~~) 4-30-134(3));
- (xiv) Specialized areas of industry;
- (xv) Human resource management;
- (xvi) Economics;
- (xvii) Business law;
- (xviii) Mathematics, statistics, and quantitative applications in business;
- (xix) Business management and organization;
- (xx) General computer skills, computer software training, information technology planning and management; and
- (xxi) Negotiation or dispute resolution courses;

(b) **Nontechnical subjects include:**

- (i) Communication skills;
- (ii) Interpersonal management skills;
- (iii) Leadership and personal development skills;
- (iv) Client and public relations;
- (v) Practice development;
- (vi) Motivational and behavioral courses; and
- (vii) Speed reading and memory building.

Subjects other than those listed above may be acceptable provided you can demonstrate they contribute to your professional competence. You are solely responsible for demonstrating that a particular program (~~(is acceptable)~~) contributes to your professional competency.

(6) **Group programs:** You may claim CPE credit for group programs such as the following so long as the program meets the standards in subsections (1) and (5) of this section:

- (a) Professional education and development programs of national, state, and local accounting organizations;
- (b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters;
- (c) Formal in-firm education programs;
- (d) Programs of other organizations (accounting, industrial, professional, etc.);
- (e) Dinner, luncheon, and breakfast meetings which are structured as formal educational programs;
- (f) Firm meetings for staff and/or management groups structured as formal education programs. Portions of such

meetings devoted to communication and application of general professional policy or procedure may qualify, but portions devoted to firm administrative, financial and operating matters generally will not qualify.

(7) **CPE credit:** CPE credit is allowable only for those programs taken in time periods after the ~~((issuance of the))~~ first CPA license is issued pursuant to the authority of the board under chapter 18.04 RCW. Credit is not allowed for programs taken to prepare an applicant for the ethics examination as a requirement for initial licensure. CPE credit is given in half-hour increments only after the first full CPE credit hour has been earned. A minimum of fifty minutes constitutes one CPE credit hour and, after the first fifty-minute segment has been earned, twenty-five minutes constitutes one-half CPE credit hour. For example:

- Twenty-five minutes of continuous instruction counts as zero CPE credit hour if that instruction is the first CPE course taken;
- Fifty minutes of continuous instruction counts as one CPE credit hour; and
- Seventy-five minutes of continuous instruction counts as one and one-half CPE credit hours.

Attendees obtain CPE credit only for time spent in instruction; no credit is allowed for preparation time unless the attendee is the discussion leader for the particular CPE segment or program.

(8) **Self-study programs:** Credit for self-study programs is allowed for reporting purposes on the date you completed the program as established by the evidence of completion provided by the program sponsor.

(a) **Interactive self-study programs:** The amount of credit allowed for interactive self-study is that which is recommended by the program sponsor on the basis of the average completion time under appropriate "field tests." In order to claim CPE credit for interactive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(b) **Noninteractive self-study programs:** The amount of credit allowed for noninteractive self-study is one-half the average completion time as determined by the program sponsor on the basis of appropriate "field tests." To claim CPE credit for noninteractive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(9) **Instructor, discussion leader, or speaker:** If you serve as an instructor, discussion leader or speaker at a program which meets the standards in subsections (1) and (5) of this section, the first time you present the program you may claim CPE credit for both preparation and presentation time. One hour of credit is allowed for each fifty minutes of instruction. Additionally, you may claim credit for actual preparation time up to two times the presentation hours. No credit is allowed for subsequent presentations. A maximum of seventy-two CPE credit hours are allowed for preparation and presentation during each CPE reporting period.

(10) **Published articles, books:** You may claim CPE credit for published articles and books, provided they contribute to your professional competence. Credit for preparation of such publications may be claimed on a self-declaration basis for up to thirty hours in a CPE reporting period. In

exceptional circumstances, you may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that justify a greater credit. The amount of credit awarded for a given publication will be determined by the board.

(11) **Carry-forward:** CPE credit hours you complete during one CPE reporting period cannot be carried forward to the next period.

(12) **Carry-back:** As specified in WAC ~~((4-25-830))~~ 4-30-134(8), CPE credit hours you complete during one CPE reporting period can be carried back to the previous reporting period only after the board has approved your extension request or has required the carry-back as part of sanctions for failure to complete required CPE.

(13) **Credential examination:** CPE credit may not be claimed for CPA examination review courses. You may not claim CPE credit for preparing for or taking a credential examination unless you complete a formal review course and receive a certificate of completion meeting the requirements of WAC ~~((4-25-833))~~ 4-30-138. CPE credit may not be claimed for CPA examination review courses.

AMENDATORY SECTION (Amending WSR 01-22-036, filed 10/30/01, effective 12/1/01)

WAC 4-25-832 How do I report my CPE to the board? In order to apply for renewal of your license, certificate, or registration as a resident nonlicensee firm owner, you must satisfy the board's CPE and supporting documentation requirements.

The reporting of compliance with CPE requirements is concurrent with filing your renewal application. When you complete your application for renewal ~~((form))~~, you are required to ~~((sign a statement certifying under the penalty of perjury))~~ certify that you complied with the board's CPE requirements as defined in WAC ~~((4-25-830))~~ 4-30-134 and supporting documentation requirements as defined in WAC ~~((4-25-833))~~ 4-30-138.

The board audits, on a test basis, compliance with CPE and supporting documentation requirements as certified ~~((on))~~ during the renewal ~~((form))~~ application process. As part of this audit the board may require additional information to demonstrate your compliance with the board's rules.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-910 What are the bases for the board to impose discipline? RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license, CPA-Inactive certificate, the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed thirty thousand dollars; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295,

18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license, CPA-Inactive certificate, registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license, certificate, or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner including but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required by RCW 18.04.215 or 18.04.195;

(b) Offering or rendering public accounting services in this state by an out-of-state individual or firm not qualified for practice privileges under RCW 18.04.195 or 18.04.350 (2);

(c) Making misleading, deceptive, or untrue representations;

(d) Engaging in acts of fiscal dishonesty;

(e) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(f) Unlawfully selling unregistered securities;

(g) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(h) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties; or

(i) Withdrawing or liquidating, as fees earned, funds received by a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC ((4-25-410)) 4-30-010, a CPA-Inactive certificate holder, or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee, certificate holder, or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in chapter 4-25 WAC, by a licensee, defined in WAC ((4-25-410)) 4-30-010, CPA-Inactive certificate holder, or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state and required to obtain a license under RCW 18.04.195 (1)(a)(iii) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license

from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of a firm not licensed in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a licensed firm to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in chapter 4-25 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC (~~4-25-410~~) 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC (~~4-25-410~~) 4-30-010, CPA-Inactive certificate holder, nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.

NEW SECTION

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC Number	New WAC Number
4-25-400	4-30-020
4-25-410	4-30-010
4-25-510	4-30-022
4-25-520	4-30-024
4-25-521	4-30-026
4-25-530	4-30-038
4-25-540	4-30-028
4-25-550	4-30-032
4-25-551	4-30-034
4-25-620	4-30-040
4-25-622	4-30-042
4-25-626	4-30-044
4-25-630	4-30-046
4-25-631	4-30-048
4-25-650	4-30-052
4-25-660	4-30-054
4-25-661	4-30-056
4-25-710	4-30-060
4-25-720	4-30-062
4-25-721	4-30-064
4-25-730	4-30-070
4-25-735	4-30-082
4-25-745	4-30-080
4-25-746	4-30-092
4-25-747	4-30-090
4-25-750	4-30-110
4-25-752	4-30-116
4-25-753	4-30-112
4-25-781	4-30-100
4-25-782	4-30-102
4-25-783	4-30-104
4-25-790	4-30-094
4-25-791	4-30-120
4-25-792	4-30-124
4-25-793	4-30-122
4-25-795	4-30-126
4-25-820	4-30-130
4-25-830	4-30-134
4-25-831	4-30-132

4-25-832	4-30-136	<u>REPEALER</u>	
4-25-833	4-30-138	The following section of the Washington Administrative Code is repealed:	
4-25-910	4-30-142		
4-25-930	4-30-058	WAC 4-25-610	Which rules govern the conduct of CPAs, CPA-Inactive certificate holders, CPA firms, and firm owners?

Chapter 4-30 WAC

GENERAL PROVISIONS

DEFINITIONS

BOARD ADMINISTRATION

ETHICS AND PROHIBITED PRACTICES

NEW SECTION

WAC 4-30-030 What are the requirements for communicating with the board and staff? Individuals and firms must communicate with the board as follows:

- Note: (1) Failure to timely inform the board of matters required by WAC 4-30-032, 4-30-036, 4-30-100, and 4-30-110 can result in late fees and/or board discipline.
 (2) Failure to timely respond to board requests for information may result in board discipline.

Condition	Time Period	Preferred Form of Contact	WAC
Complete and/or submitted applications, including requested information, documents, and fees.	Prior to holding out as a credentialed person.	On-line system, board form, letter, or e-mail with required information.	Various
Request for brief adjudicative proceeding (BAP).	Within 30 days after the staff decision is posted in U.S. mail.	E-mail or written correspondence.	4-30-028
Request for appeal of brief adjudicative proceeding (BAP).	Within 21 days after the BAP decision is posted in U.S. mail.	Oral, e-mail or written correspondence.	4-30-028
1. Change of individual physical address; or 2. Change in the physical address of a firm's main office or branch office(s).	Within 30 days of any change of address.	On-line system, board form, letter, or e-mail with required information.	4-30-32
Board requests for information or documents from licensees, certificate holders, nonlicensee firm owners, or applicants.	Within 20 days after the date of the request.	E-mail or written correspondence with requested information.	4-30-34

Condition	Time Period	Preferred Form of Contact	WAC
1. Notification of orders or sanctions imposed by the SEC, PCAOB, IRS, or another state board of accountancy for reasons other than payment of a license fee or failure to meet the CPE requirements of another state board of accountancy. 2. Charges filed by the SEC, IRS, PCAOB, another state board of accountancy or a federal or state taxing, insurance or securities regulatory body.	Within 30 days of receipt of an initial notice.	Board form, letter, PDF, or e-mail with required information.	4-30-036
Licensees or certificate holders granted issued through foreign reciprocity. Any investigations undertaken or sanctions imposed by a foreign credentialing body against a foreign credential.	Within 30 days of receiving notice that an investigation has begun or a sanction was imposed.	Board form, letter, PDF, or e-mail with required information.	4-30-036
Reporting firm changes: <ul style="list-style-type: none"> • Change in legal form; • Dissolution of a firm; • Change in resident manager(s) or owner(s); • Change in branch or main office location(s); • Change in firm name; • Noncompliance with firm ownership requirements. 	Within 90 days after the condition occurs.	Board form, letter, PDF, or e-mail with required information.	4-30-110
A foreign license, permit, or certificate has lapsed or otherwise becomes invalid.	Within 30 days after the credential issued by the other jurisdiction has lapsed or otherwise becomes invalid.	Board form, letter, PDF, or e-mail with required information.	4-30-100

UNIFORM CPA EXAMINATION

INDIVIDUAL EXPERIENCE AND VERIFICATION

NEW SECTION

WAC 4-30-072 What are the responsibilities of a verifying CPA? The verifying CPA is expected to:

(1) Obtain the applicant's completed Experience Affidavit form and supporting documentation to support the jobs the applicant held which provided the experience supporting the applicant's assertion that by performing the specific job functions, she/he was provided the opportunity to obtain each specific competency (this expectation may be met if the applicant is employed by the verifying CPA's firm or organization);

(2) Verify the applicant's relevant employment history;

(3) Interview the candidate or otherwise obtain or possess knowledge sufficient to understand the skill sets applied, tasks performed, and time spent in the applicant's represented job functions;

(4) Assess whether the skill sets applied, tasks performed, and time spent would likely provide an opportunity to obtain each specific competency, excluding knowledge of the Washington state Public Accountancy Act and related board rules;

(5) Determine, by interview or course completion certificate, etc., that the applicant is knowledgeable of the Public Accountancy Act and related board rules applicable to individuals licensed in the state of Washington;

(6) Document this process and the basis for the conclusions reached by the verifying CPA relative to each specific competency, and maintain this documentation for a minimum of three years.

WASHINGTON RESIDENT INDIVIDUAL LICENSING

INDIVIDUAL LICENSING BY INTERSTATE RECIPROCI- PROCI- TY

INDIVIDUAL LICENSING BY INTERNATIONAL RECIPROCI- TY

CPA FIRM ORGANIZATION AND OWNERSHIP

FIRM LICENSING REQUIREMENTS

NEW SECTION

WAC 4-30-114 How do I apply for and maintain a firm license? (1) How does a firm apply for an initial firm license? To apply for an initial firm license an owner, or designee, or, in the case of an out-of-state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application must submit the following information to the board:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office located and maintained in this state;
- (d) Resident licensee owners' names;
- (e) Name(s) of all resident nonlicensee owners; and
- (f) Type of legal organization under which the firm operates.

The required information must be submitted to the board either by making application through the board's on-line application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

Upon approval of the firm's application the firm's licensed status will be posted in the board's licensee data base

and, therefore, made publicly available for confirmation. A hard copy of the firm license can be provided upon request.

The initial CPA firm license will expire on June 30th of the third calendar year following initial licensure.

(2) How do I renew a CPA firm license? To renew a CPA firm license an owner or designee or, in the case of an out-of-state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application, must submit the information described in subsection (1) of this section that is current at the date the renewal application is submitted to the board. A renewal application is not complete and cannot be processed until all required information, requested documents, and all fees are submitted to the board.

An individual authorized by the firm must provide the required information to the board either by making application through the board's on-line application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

On the date the renewal application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the renewed status can be provided upon request.

The CPA firm license will expire on June 30th of the third calendar year following the calendar year of renewal.

(3) When and how must the firm notify the board of changes in the licensed firm? An individual authorized by the firm must provide the board written notification and other documentation deemed necessary by the board within ninety days of any or all of the following occurrences:

- (a) Dissolution of the firm;
- (b) The occurrence of any event that would cause the firm to be in violation of RCW 18.04.195 or this section, including the retirement, lapse, revocation or suspension of the license of a sole proprietor or sole owner of another legal form of organization, for example, a limited liability company (LLC) or professional service corporation (PS) owned by a single person, licensed by the board for the practice of public accounting, and holding out to the public for the practice of public accounting and/or offering or performing professional services restricted to licensees; or
- (c) An event that requires an amendment to a firm license.

(4) What events require a firm amendment? An individual authorized by the firm must provide written notification to the board, by submitting the following information and the appropriate amendment fee, within ninety days of the following:

- (a) Admission or withdrawal of a resident licensee owner;
- (b) Any change in the name of the firm; or
- (c) Change in the resident managing licensee of the firm's main office in this state; or
- (d) Change in the resident managing licensee of any branch office of the firm.

(5) How long do I have to correct noncompliance with licensure requirements due to a change in ownership or

an owner's credentials? The board must be notified in writing within ninety days of the first date the firm is not in compliance with the firm's licensure requirements due to changes in firm ownership and propose a time period in which the firm will achieve compliance. The board may grant a reasonable period of time for a firm to become compliant. The board may revoke, suspend, or impose conditions on the firm's license for failure to bring the firm into compliance within the approved time period.

CONVERSIONS, RETIREMENTS AND REINSTATEMENTS

CONTINUING COMPETENCY

INVESTIGATIONS, DISCIPLINE AND ENFORCEMENT

NEW SECTION

WAC 4-30-140 What are the authority, structure, and processes for investigations and sanctions? Investigations are responsive to formal complaints or indications of a potential violation of chapter 18.04 RCW and in all proceedings under RCW 18.04.295 or chapter 34.05 RCW.

Investigations must be directed and conducted by individuals sufficiently qualified and knowledgeable of the subject matter of an investigation.

The board chair may delegate investigative authority and responsibility for initiating and directing investigations to a designee including the executive director of the board (RCW 18.04.045(7)).

The general responsibilities when directing an investigation are:

- (1) Determine whether the complaint or other source of information is within the authority of the board;
- (2) Determine the most likely sanction the board might impose if the alleged violation is proven;
- (3) Determine the scope and type of evidence needed to reach a conclusion whether a violation occurred;
- (4) Monitor communications to the person(s) affected by the investigative process;
- (5) Monitor the progress of the evidentiary gathering process to ensure that the scope of inquiry and request for records is limited to that necessary to reach a conclusion whether the violation occurred;
- (6) Upon completion of the investigation, evaluate the sufficiency of the evidence to support a conclusion as to whether a violation occurred;
- (7) Develop a recommendation for dismissal or sanction for consideration by a consulting board member based upon the accumulated evidence and the board's "fair and equitable" standard for sanctioning.

The gathering of appropriate evidence should be assigned to staff or contract investigators who have no current or former close relationship to (or with) the complainant or the respondent.

WSR 10-24-013 PERMANENT RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 18, 2010, 3:04 p.m., effective December 19, 2010]

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

Purpose: These amendments conform state Indian country disregard standards to current federal law standards; clarify who is exempt from participation requirements; and, redefine the eligibility criteria for a hardship TANF/SFA time limit extension.

The amended rules provide time limit extensions to clients who continue to meet TANF/SFA eligibility requirements; have reached the sixty-month time limit; and are exempt from participation requirements because they are (1) an older care taker relative; (2) an adult with a severe and chronic disability; (3) required to be in the home to care for a child with special needs; or (4) required to be in the home to care for a disabled adult relative. The amended rules also provide time limit extensions to clients who continue to meet TANF/SFA eligibility requirements; have reached the sixty-month time limit; and (1) have an open child welfare case and a dependent child under Title 13 [RCW] for the first time; (2) are working in unsubsidized employment for at least thirty-two hours per week; or (3) document that he/she meets family violence criteria and is participating in activities needed to address the client's family violence issues.

The amended rules that redefine the eligibility criteria for a hardship TANF/SFA time limit extension are needed to reduce program costs in response to a budget shortfall. The department expects that some clients who are currently receiving a hardship TANF/SFA time limit extension will no longer be eligible and will be terminated from the program. The amended rules that clarify exemption from participation criteria will likely have no impact on clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-484-0005, 388-484-0006, 388-484-0010, and 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Adopted under notice filed as WSR 10-20-163 on October 6, 2010.

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 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: November 17, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-079, filed 7/31/09, effective 9/1/09)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

You are exempt from mandatory participation if you are:

(a) ~~((An older needy))~~ A caretaker relative as defined by WAC 388-484-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below and:

(i) ~~((The))~~ You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan; and/or

(ii) Your disability ((must be)) is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months; ((or)) and

~~((ii)) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are applying for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability); and~~

(iii) Your disability and ability to participate is verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), and/or regional support network (RSN), or evidence from another medical or mental health professional; and

(iv) Your SSI application status may be verified through the SSI facilitator and/or state data exchange.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that ~~((significantly interferes with your ability to look for work or work))~~ prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

(2) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(3) Can I participate in WorkFirst while I am exempt?

(a) You may choose to participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(4) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

~~((An exemption from participation does not affect your sixty-month time limit (described in WAC 388-484-0005) for receiving TANF/SFA benefits.))~~ Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(5) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(6) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(7) For time-limited extensions, see WAC 388-484-0006.

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) What is the sixty-month time limit?

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or medicaid.

(2) When did the sixty-month time limit go into effect?

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) Does the time limit apply to me?

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(4) Do any exceptions to the time limits apply to me?

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An ~~(American Indian or Native Alaskan)~~ adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan Native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless you qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

(6) What can I do if I disagree with how the department has counted my months of cash assistance?

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records; and

(ii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

(7) Does the department ever change the number of months that count against my time limit?

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at ~~((a fair))~~ an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of

TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

Effective February 1, 2011, you are eligible for a hardship TANF/SFA time limit extension if you are on TANF or otherwise eligible for TANF, have received sixty cumulative months of TANF and:

(a) You ~~((qualify for one of the exemptions listed in))~~ are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d); or

(b) You:

(i) ~~((Are participating satisfactorily in the WorkFirst program (see chapter 388-310 WAC for a description of WorkFirst participation requirements)))~~ Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(ii) Are working in unsubsidized employment for thirty-two hours or more per week; or

(iii) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating ((satisfactorily in specialized activities listed in your individual responsibility plan)) satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence.

~~((e) You have a temporary situation that prevents you from working or looking for a job. (For example, you may be unable to look for a job while you have health problems or if you are dealing with family violence.) You will receive a time limited extension if you are participating in activities included in your individual responsibility plan to help your situation.~~

~~(d) You are in sanction, but you will be subject to the sanction rules described in WAC 388-310-1600.))~~

(3) Who reviews and approves ~~((a))~~ a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine ~~((which))~~ whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit.

(c) Before you reach your time limit, the department will send you a notice that tells you whether ~~((your))~~ a hardship time limit extension ((was)) will be approved when your time limit expires and how to request ~~((a fair))~~ an administrative hearing if you disagree with the decision.

(4) Do my WorkFirst participation requirements change if I receive a hardship TANF/SFA time limit extension?

~~(a) ((Your participation requirements do not change))~~ Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

~~(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.~~

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

~~(6) ((What happens if I stop participating in WorkFirst activities as required during a TANF/SFA time limit extension?~~

~~If you do not participate in the WorkFirst activities required in your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600(4), the department will follow the sanction rules in WAC 388-310-1600.~~

~~(7)) How long will a hardship TANF/SFA time limit extension last?~~

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months(;

~~(iii) If you are extended under WAC 388-484-0006 (2)(c) or (d) then we will review your extension at least every twelve months).~~

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and ~~((change the type of TANF/SFA time limit extension))~~ determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

AMENDATORY SECTION (Amending WSR 01-04-016, filed 1/26/01, effective 2/1/01)

WAC 388-484-0010 How does the five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance apply to ~~((American Indians or Alaskan Natives))~~ adults living in Indian country? (1) If you are ~~((American Indian or Alaskan Native))~~ an adult living in Indian country, ((time limits on)) months of temporary assistance for

needy families (TANF), state family assistance (SFA) and general assistance for pregnant women (from May 1, 1999 to July 31, 1999) do not count towards the time limit under certain circumstances.

~~((If you are an American Indian or Alaskan Native parent or other relative as defined by WAC 388-454-0010,))~~ Months of cash assistance received do not count against the sixty-month lifetime limit ~~((if))~~ while you ((live)) are an adult living in Indian country or an Alaskan Native village where at least fifty percent of ~~((Indian))~~ adults are not employed.

~~(2) ((Do time limits on cash assistance apply if I am not an American Indian or Alaskan Native but I am the parent or other relative of an American Indian or Alaskan Native child?))~~

~~If you are a non-American Indian or non-Alaskan Native parent or other relative, as defined by WAC 388-454-0010, of an American Indian or Alaskan Native child or children living in a qualifying area of Indian country, your months on assistance will count against your lifetime limit. You may, however, receive more than sixty months of assistance under hardship criteria to be developed by the department.~~

~~((3))~~ **(3) Where must I live to qualify for the Indian country exemption to time limits?**

To qualify for this exemption to TANF time limits, you must live in "Indian country." The department uses the "Indian country" definition in federal law at 18 U.S.C. 1151. Indian country is defined as reservations, dependent Indian communities, and allotments. Dependent Indian communities must be set aside by the federal government for the use of Indians and be under federal superintendence. Near reservation areas (areas or communities adjacent or contiguous to reservations) are not considered Indian country for purposes of this exemption.

~~((4) Can I live on the reservation or Indian country belonging to a tribe other than my own to qualify for this time limit exemption?)~~

~~Yes. You do not need to be an American Indian or Alaskan Native of the same tribe as the reservation or other area of Indian country on which you reside.~~

~~((5))~~ **(3) How does the department determine if at least fifty percent of adults living in Indian country are not employed?**

The department uses the most current biennial *Indian Service Population and Labor Force Estimates Report* published by the Bureau of Indian Affairs (BIA), or any successor report, as the default data source to determine if the not employed rates for areas of Indian country are at least fifty percent.

~~((6))~~ **(4) What if a tribe disagrees with the not employed rate published in the BIA Indian Service Population and Labor Force Estimates Report?**

A tribe may provide alternative data, based on similar periods to the *Indian Service Population and Labor Force Estimates Report*, to demonstrate that the not employed rate is at least fifty percent.

WSR 10-24-015
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed November 19, 2010, 9:26 a.m., effective December 20, 2010]

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

Purpose: Adopting amended WAC 170-151-230 What requirements must I meet for medication management?, 170-295-3060 Who can provide consent for me to give medication to the children in my care?, and 170-296-0870 How do I manage medications for children?

The amended rules allow department of early learning (DEL)-licensed child care providers to administer alcohol-based hand sanitizer gels to children over twelve months old with written permission from the child's parent or guardian. The rules classify hand sanitizer gels as "over the counter" or "nonprescription" medications that must be administered under provider or qualified staff supervision, and require that the child care provider document each time a hand sanitizer gel is administered to a child.

The adopted rules, when effective, replace and supersede emergency rules filed on October 12, 2010, filing number WSR 10-21-032.

Hand washing with soap and water remain the preferred method for hand cleaning in DEL-licensed child care facilities. But when soap and water are not available, alcohol-based hand sanitizer gels are considered effective in limiting the spread of flu viruses and other communicable diseases. The rules reduce barriers to using hand sanitizer gels when the use is appropriate and the child care provider has written permission from the child's parent or guardian.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-230, 170-295-3060, and 170-296-0870.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.200, chapter 43.215 RCW.

Adopted under notice filed as WSR 10-16-090 on June [July] 30, 2010.

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 3, Repealed 0.

Date Adopted: November 19, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-230 What requirements must I meet for medication management? You may have a policy of not giving medication to the child in care. If your center's health care plan includes giving medication to the child in care, you:

(1) Must give medications, prescription and nonprescription, only on the written approval of a parent, person, or agency having authority by court order to approve medical care;

(2) Must give prescription medications:

(a) Only as specified on the prescription label; or

(b) As authorized, in writing, by a physician or other person legally authorized to prescribe medication.

(3) Must give the following classifications of nonprescription medications, with written parent authorization, only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication:

(a) Antihistamines;

(b) Nonaspirin fever reducers/pain relievers;

(c) Nonnarcotic cough suppressants;

(d) Decongestants;

(e) Anti-itching ointments or lotions, intended specifically to relieve itching;

(f) Diaper ointments and powders, intended specifically for use in the diaper area of the child; (~~and~~)

(g) Sun screen; and

(h) Hand sanitizers.

(4) Must give other nonprescription medication:

(a) Not included in the categories listed in subsection (3) of this section; or

(b) Taken differently than indicated on the manufacturer's label; or

(c) Lacking labeled instructions, only when disbursement of the nonprescription medication is as required under subsection (4)(a), (b), and (c) of this section:

(i) Authorized, in writing, by a physician; or

(ii) Based on established medical policy approved, in writing, by a physician or other person legally authorized to prescribe medication.

(5) Must accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

(a) The child's first and last names;

(b) The date the prescription was filled; or

(c) The medication's expiration date; and

(d) Legible instructions for administration, such as manufacturer's instructions or prescription label.

(6) Must keep medication, refrigerated or nonrefrigerated, in an orderly fashion and inaccessible to the child;

(7) Must store external medication in a compartment separate from internal medication;

(8) Must keep a record of medication disbursed;

(9) Must return to the parent or other responsible party, or must dispose of medications no longer being taken; and

(10) May, at your option, permit self-administration of medication by a child in care if:

(a) The child is physically and mentally capable of properly taking medication without assistance;

(b) You include in the child's file a parental or physician's written statement of the child's capacity to take medication without assistance; and

(c) You have stored the child's medications and other medical supplies so the medications and medical supplies are inaccessible to other children in care.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3060 Who can provide consent for me to give medication to the children in my care? (1) Parents must give written consent before you give any child any medication. The parent's written consent must include:

(a) Child's first and last name;

(b) Name of medication;

(c) Reason for giving medication;

(d) Amount of medication to give;

(e) How to give the medication (route);

(f) How often to give the medication;

(g) Start and stop dates;

(h) Expected side effects; and

(i) How to store the medication consistent with directions on the medication label.

(2) The parent consent form is good for the number of days stated on the medication bottle for prescriptions. You may not give medication past the days prescribed on the medication bottle even if there is medication left.

(3) You may give the following medications with written parent consent if the medication bottle label tells you how much medication to give based on the child's age and weight:

(a) Antihistamines;

(b) Nonaspirin fever reducers/pain relievers;

(c) Nonnarcotic cough suppressants;

(d) Decongestants;

(e) Ointments or lotions intended to reduce or stop itching or dry skin;

(f) Diaper ointments and nontalc powders, intended only for use in the diaper area; (~~and~~)

(g) Sun screen for children over six months of age; and

(h) Hand sanitizers for children over twelve months of age.

(4) All other over the counter medications must have written directions from a health care provider with prescriptive authority before giving the medication.

(5) You may not mix medications in formula or food unless you have written directions to do so from a health care provider with prescriptive authority.

(6) You may not give the medication differently than the age and weight appropriate directions or the prescription directions on the medication label unless you have written directions from a health care provider with prescriptive authority before you give the medication.

(7) If the medication label does not give the dosage directions for the child's age or weight, you must have written instructions from a health care provider with prescriptive authority in addition to the parent consent prior to giving the medication.

(8) You must have written consent from a health care provider with prescriptive authority prior to providing:

- (a) Vitamins;
- (b) Herbal supplements; and
- (c) Fluoride.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0870 How do I manage medications for children? You must meet specific requirements for managing prescription and nonprescription medication for children under your care. Only you or another, primary staff person may perform the functions described in this section.

(1) You must have written approval of the child's parent or legal guardian to give the child any medication. This approval must not exceed thirty days.

(2) You must:

(a) Keep a written record of all medications you give a child;

(b) Return any unused medication to the parent or legal guardian of the child;

(c) Give certain classifications of nonprescription medications, only with the dose and directions on the manufacturer's label for the age or weight of the child needing the medication. These nonprescribed medications include but are not limited to:

(i) Nonaspirin, fever reducers or pain relievers;

(ii) Nonnarcotic cough suppressants;

(iii) Decongestants;

(iv) Anti-itching ointments or lotions intended specifically to relieve itching;

(v) Diaper ointments and talc free powders intended specifically for use in the diaper area of children; ~~(and)~~

(vi) Sun screen; and

(vii) Hand sanitizers for children over twelve months of age.

(3) You must not administer any nonprescribed medication for the purpose of sedating a child;

(4) You must not administer any prescribed medication in an amount or frequency other than that prescribed by a physician, psychiatrist or dentist;

(5) You must not give one child's medications to another child; and

(6) You must not use any prescribed medication to control a child's behavior unless a physician prescribes the medication for management of the child's behavior.

WSR 10-24-016
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed November 19, 2010, 9:27 a.m., effective December 20, 2010]

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

Purpose: Increasing child care center and school-age center program annual license fees, by amending WAC 170-151-070 How do I apply for a license? and 170-295-0060 What are the requirements for applying for a license to operate a child care center?

The 2010 Legislature, in adopting the 2010-2011 supplemental operating budget bill ESSB 6444 (chapter 37, Laws of 2010 1st sp. sess.), included a proviso in section 614(14) directing DEL to raise annual child care center license fees in fiscal year 2011 by slightly more than double their previous rate. With the increase, the new annual license fee is \$100 for the first twelve children, plus \$8 per additional child up to the center's licensed capacity. The fee is assessed at each center's annual license anniversary date for current licensees. The increase applies to approximately two thousand one hundred twenty DEL-licensed child care centers and school-age center programs. Child care license fees had not increased since 1982. The legislature did not increase family home child care license fees.

The legislature raised child care center license fees as one of several measures to close an anticipated \$2.8 billion shortfall in the 2010-2011 state budget, and to offset projected future shortfalls. DEL license fees are deposited to the state general fund and are not retained by DEL.

RCW 43.215.255(3) requires that DEL set child care license fees by rule. DEL implemented the new center license fees by emergency rules filed as WSR 10-13-072 and extended as WSR 10-21-031. When these permanent rules are effective, they will replace and supersede the emergency rules filed as WSR 10-21-031.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070 and 170-295-0060.

Statutory Authority for Adoption: RCW 43.215.255 and 43.215.070, chapter 43.215 RCW.

Other Authority: ESSB 6444 (section 614(14), chapter 37, Laws of 2010 1st sp. sess.), RCW 43.135.055.

Adopted under notice filed as WSR 10-18-065 on August 30, 2010.

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

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

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

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

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

Date Adopted: November 19, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee(~~(-The fee)~~) is:

(i) For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2010, or for licensees whose annual licensing fees are due after June 30, 2010, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensor before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1)

To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

(i) For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2010, or for licenses whose annual license fees are due after June 30, 2010, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children;

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity;

and

(ii) Social Security card that is valid for employment or verification of your employer identification number.

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor.

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

- (b) Your current license is scheduled to expire;
- (c) You expect to relocate your center;
- (d) You expect to change licensee; or
- (e) You expect a change in your license category.

WSR 10-24-021
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed November 19, 2010, 1:30 p.m., effective December 20, 2010]

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

Purpose: This revision is necessary to update and clarify wording under subsection (3) of this section, specifically the word "percentage" should be "maximum allowable cost."

The rule change clarifies that the department may set "estimated acquisition cost (EAC)" payment rates for certain specified drugs or drug categories, at a maximum cost, rather than as a percentage discount off the reference price. This will allow the department to avoid excessive programming costs associated with setting unique percentage rates on specified drugs. The new wording does not change the prerogative of the department to pay lower EAC rates when appropriate.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-530-8000.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Adopted under notice filed as WSR 10-19-133 on September 22, 2010.

A final cost-benefit analysis is available by contacting Myra Davis, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1847, fax (360) 586-9727, e-mail davisms@dshs.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 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: November 19, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-8000 Reimbursement method—Estimated acquisition cost (EAC). (1) The department determines estimated acquisition cost (EAC) using:

- (a) Acquisition cost data made available to the department; or
- (b) Information provided by any of the following:
 - (i) Audit agencies, federal or state;
 - (ii) Other state health care purchasing agencies;
 - (iii) Pharmacy benefit managers;
 - (iv) Individual pharmacy providers participating in the department's programs;
 - (v) Centers for Medicare and Medicaid Services (CMS);
 - (vi) Other third party payers;
 - (vii) Drug file data bases; and/or
 - (viii) Actuaries or other consultants.

(2) The department implements EAC by applying a percentage adjustment to available reference pricing from national sources such as wholesale acquisition cost (~~((WAC))~~), average wholesale price (AWP), average sale price (ASP), and average manufacturer price (AMP).

(3) The department may set EAC for specified drugs or drug categories at a (~~(percentage))~~ maximum allowable cost other than that determined in subsection (1)(a) of this section when the department considers it necessary. The factors the department considers in setting a rate for a class of drugs under this subsection include, but are not limited to:

- (a) Product acquisition cost;
 - (b) The department's documented clinical concerns; and
 - (c) The department's budget limits.
- (4) The department bases EAC drug reimbursement on the actual package size dispensed.

(5) The department uses (~~(the))~~ EAC as the department's reimbursement for a drug when (~~(the))~~ EAC is the lowest of the rates calculated under the methods listed in WAC 388-530-7000, or when the conditions of WAC 388-530-7300 are met.

WSR 10-24-028
PERMANENT RULES
TRANSPORTATION COMMISSION

[Filed November 19, 2010, 2:42 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of this rule is to raise the ferry tolls and charter rates within the specified WACs. The revisions follow the annual review of Washington state ferries farebox revenue needs. No major effects are anticipated.

Citation of Existing Rules Affected by this Order:
Amending WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.326.

Adopted under notice filed as WSR 10-20-148 on October 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Due to some of the comments received on the

school group discount proposal, it was determined that additional analysis would be needed. Therefore, it was not adopted as part of this tariff change.

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

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

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

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

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

Date Adopted: November 15, 2010.

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. (~~October 11, 2009~~) January 1, 2011

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides ¹	Monthly Pass ⁵	Bicycle Surcharge ^{2,6}
Via Auto Ferry	((5.30))	((2.65))	((4.25))	((42.40))	((67.85))	
*Fautleroy-Southworth	<u>5.50</u>	<u>2.75</u>	<u>4.40</u>	<u>44.00</u>	<u>70.40</u>	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island	((6.90))	((3.45))	((5.55))	((55.20))	((88.35))	
*Edmonds-Kingston	<u>7.10</u>	<u>3.55</u>	<u>5.70</u>	<u>56.80</u>	<u>90.90</u>	1.00
Port Townsend-Keystone	((2.65))	((1.30))	((2.15))	((42.40))	((67.85))	
	<u>2.75</u>	<u>1.35</u>	<u>2.20</u>	<u>44.00</u>	<u>70.40</u>	0.50
*Fautleroy-Vashon						
*Southworth-Vashon	((4.45))	((2.20))	((3.60))	((35.60))	((57.00))	
*Pt. Defiance-Tahlequah	<u>4.55</u>	<u>2.25</u>	<u>3.65</u>	<u>36.40</u>	<u>58.25</u>	1.00
	((4.10))	((2.05))	((3.30))	((32.80))	((52.50))	
*Mukilteo-Clinton	<u>4.20</u>	<u>2.10</u>	<u>3.40</u>	<u>33.60</u>	<u>53.80</u>	1.00
(*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday)	10.10	5.05	8.10	72.80	N/A	2.00⁷)
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor(-Wednesday-Saturday)	((11.20))	((5.60))	((9.00))	((72.80))		
	<u>11.50</u>	<u>5.75</u>	<u>9.20</u>	<u>74.75</u>	N/A	2.00 ⁷
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((16.40))	((8.20))	((13.15))			
	<u>16.85</u>	<u>8.40</u>	<u>13.50</u>	N/A	N/A	4.00 ⁸
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((6.15))	((3.05))	((4.95))			
	<u>6.30</u>	<u>3.15</u>	<u>5.05</u>	N/A	N/A	1.00 ⁹
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((22.55))	((11.25))	((18.10))			
	<u>23.15</u>	<u>11.55</u>	<u>18.55</u>	N/A	N/A	5.00 ¹⁰

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery times.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional

SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

⁶BICYCLE PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

⁷BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 (~~until the second Sunday in October~~) through September 30).

⁸BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

⁹BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

¹⁰BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$ 0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish

and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. (~~Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.~~)

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. (~~Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.~~)

~~PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from May 1 to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes. The resulting fare is rounded up to the next \$0.05 if required.~~)

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

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

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

AMENDATORY SECTION (Amending WSR 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. (~~October 11, 2009~~) January 1, 2011

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Multiride Media 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	((9.15)) 9.35	((7.80)) 7.95	((9.15)) 9.35	((146.40)) 149.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((11.85)) 12.15	((10.40)) 10.35	((11.85)) 12.15	((189.60)) 194.40
*Fauntleroy-Vashon *Southworth-Vashon	((15.20)) 15.55	((12.95)) 13.25	((15.20)) 15.55	((121.60)) 124.40
*Pt. Defiance-Tahlequah				
Mukilteo-Clinton	((7.00)) 7.20	((5.95)) 6.15	((7.00)) 7.20	((112.00)) 115.20
10 Rides - 5 Round Trips				
*Anacortes to Lopez(—Sunday-Tuesday)	((24.55)) 27.95	((19.50)) 22.20	((24.55)) 27.95	((102.20)) 104.85
(*Lopez—Wednesday-Saturday)	27.25	21.65	27.25	102.20
*Shaw, Orcas - Sunday-Tuesday	29.45	24.40	29.45	122.65
*Shaw, Orcas(—Wednesday-Saturday)	((32.70)) 33.55	((27.10)) 27.80	((32.70)) 33.55	((122.65)) 125.85
(*Friday Harbor—Sunday-Tuesday)	35.05	30.00	35.05	145.90
*Friday Harbor(—Wednesday-Saturday)	((38.90)) 39.85	((33.30)) 34.10	((38.90)) 39.85	((145.90)) 149.45
Between Lopez, Shaw, Orcas and Friday Harbor ³	((17.95)) 18.75	((17.95)) 18.75	((17.95)) 18.75	((71.80)) 75.00
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((44.05)) 45.15	((35.85)) 36.70	((44.05)) 45.15	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((13.15)) 13.50	((10.05)) 10.35	((13.15)) 13.50	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((57.20)) 58.65	((45.90)) 47.05	((57.20)) 58.65	N/A

EFFECTIVE 03:00 A.M. (~~October 11, 2009~~) January 1, 2011

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	((3.95)) 4.10	((2.60)) 2.70	((1.30)) 1.35	((63.20)) 65.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5.15)) 5.30	((3.40)) 3.50	((1.70)) 1.75	((82.40)) 84.80
*Fauntleroy-Vashon *Southworth-Vashon	((6.60)) 6.75	((4.35)) 4.45	((2.15)) 2.20	((52.80)) 54.00
*Pt. Defiance-Tahlequah				
Mukilteo-Clinton	((3.05)) 3.15	((2.00)) 2.10	((1.00)) 1.05	((48.80)) 50.40
*Anacortes to Lopez(—Sunday-Tuesday)	((13.05)) 14.80	((8.00)) 9.05	((2.95)) 3.30	((108.40)) 111.00
(*Lopez—Wednesday-Saturday)	14.45	8.85	3.25	108.40
*Shaw, Orcas - Sunday-Tuesday	13.95	8.90	3.85	116.25
*Shaw, Orcas(—Wednesday-Saturday)	((15.50)) 15.95	((9.90)) 10.20	((4.30)) 4.45	((116.25)) 119.65
(*Friday Harbor—Sunday-Tuesday)	15.10	10.05	5.00	125.65
*Friday Harbor(—Wednesday-Saturday)	((16.75)) 17.20	((11.15)) 11.45	((5.55)) 5.70	((125.65)) 129.00
Between Lopez, Shaw, Orcas and Friday Harbor ³	((5.10)) 5.35	((5.10)) 5.35	((5.10)) 5.35	N/A

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ²
	One Way	One Way		
Anacortes to Sidney and Sidney to all destinations	((21.95)) <u>22.55</u>	((13.75)) <u>14.10</u>	((5.55)) <u>5.70</u>	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((7.55)) <u>7.75</u>	((4.45)) <u>4.60</u>	((1.40)) <u>1.45</u>	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((29.50)) <u>30.30</u>	((18.20)) <u>18.70</u>	((6.95)) <u>7.15</u>	N/A

All fares rounded to the next multiple of \$0.05.
 * These routes operate as a one-point toll collection system.

¹SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overweight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time.

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

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain circumstances.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passen-

gers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 (~~to the second Sunday in October~~) through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. A 114% surcharge shall be applied to the San Juan Islands to Sidney route. The resulting fare is rounded up to the next \$0.05 if required.

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

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and

certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

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

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

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

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

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

AMENDATORY SECTION (Amending WSR 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. (~~October 11, 2009~~) January 1, 2011

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth	((13.75))	((27.45))	((36.60))	((45.75))	((54.90))	((64.05))	((73.20))	((0.90))
Port Townsend/Keystone	14.05	28.05	37.40	46.75	56.10	65.45	74.80	0.95
Seattle-Bainbridge Island								
Seattle/Bremerton	((17.80))	((35.55))	((47.40))	((59.25))	((71.10))	((82.95))	((94.80))	
Edmonds-Kingston	18.25	36.45	48.60	60.75	72.90	85.05	97.20	1.20
*Fauntleroy-Vashon								
*Southworth-Vashon	((22.80))	((45.60))	((60.80))	((76.00))	((91.20))	((106.40))	((121.60))	
*Pt. Defiance-Tahlequah	23.35	46.65	62.20	77.75	93.30	108.85	124.40	1.55
	((10.50))	((21.00))	((28.00))	((35.00))	((42.00))	((49.00))	((56.00))	
Mukilteo-Clinton	10.80	21.60	28.80	36.00	43.20	50.40	57.60	0.70
(*Anacortes to Lopez -- Sunday-Tuesday) ²	36.85	73.65	98.20	122.75	147.30	171.85	196.40	2.50
*Anacortes to Shaw, Orcas -- Sunday-Tuesday ²	44.20	88.35	117.80	147.25	176.70	206.15	235.60	2.95
*Anacortes to Friday Harbor -- Sunday-Tuesday	52.60	105.15	140.20	175.25	210.30	245.35	280.40	3.55))
*Anacortes to Lopez(-- Wednesday-Saturday) ²	((40.90))	((81.75))	((109.00))	((136.25))	((163.50))	((190.75))	((218.00))	((2.75))
	41.95	83.85	111.80	139.75	167.70	195.65	223.60	2.80
*Anacortes to Shaw, Orcas(-- Wednesday-Saturday) ²	((49.05))	((98.10))	((130.80))	((163.50))	((196.20))	((228.90))	((261.60))	((3.30))
	50.35	100.65	134.20	167.75	201.30	234.85	268.40	3.35
*Anacortes to Friday Harbor(-- Wednesday-Saturday)	((58.35))	((116.70))	((155.60))	((194.50))	((233.40))	((272.30))	((311.20))	((3.90))
	59.80	119.55	159.40	199.25	239.10	278.95	318.80	4.00
Between Lopez, Shaw, Orcas and Friday Harbor ³	((26.95))	((53.85))	((71.80))	((89.75))	((107.70))	((125.65))	((143.60))	
	28.15	56.25	75.00	93.75	112.50	131.25	150.00	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	((66.10))	((66.10))	((88.10))	((110.15))	((132.15))	((154.20))	((176.20))	
	67.75	67.75	90.30	112.90	135.45	158.05	180.60	2.25
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	((66.10))	((132.15))	((176.20))	((220.25))	((264.30))	((308.35))	((352.40))	((4.45))
	67.75	135.45	180.60	225.75	270.90	316.05	361.20	4.50
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	((19.75))	((19.75))	((26.30))	((32.90))	((39.45))	((46.05))	((52.60))	0.70
	20.25	20.25	27.00	33.75	40.50	47.25	54.00	
- Commercial Vehicles	((19.75))	((39.45))	((52.60))	((65.75))	((78.90))	((92.05))	((105.20))	
	20.25	40.50	54.00	67.50	81.00	94.50	108.00	1.35

Oversize Vehicle Ferry Tolls¹

Overall Unit Length - Including Driver

ROUTES	20' To	20' To	30' To	40' To Under	50' To	60' To under	70' To and	Cost Per
	Under 30'	Over 30'						
	Under 7'6"	Over 7'6"	Under 40'	50'	Under 60'	70'	include 80'	Ft. Over
	High	High						80' @
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ - Recreational Vehicles and Buses	((85.85)) <u>88.00</u>	((85.85)) <u>88.00</u>	((114.40)) <u>117.30</u>	((143.05)) <u>146.65</u>	((171.60)) <u>175.95</u>	((200.25)) <u>205.30</u>	((228.80)) <u>234.60</u>	((2.90)) <u>2.95</u>
- Commercial Vehicles	((85.85)) <u>88.00</u>	((171.60)) <u>175.95</u>	((228.80)) <u>234.60</u>	((286.00)) <u>293.25</u>	((343.20)) <u>351.90</u>	((400.40)) <u>410.55</u>	((457.60)) <u>469.20</u>	((5.80)) <u>5.85</u>

¹OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: ~~((October 11, 2009 - October 9, 2010, \$58.25))~~ \$59.50 base season, ~~\$(78.75))~~ 80.25 peak season.

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system. Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from ~~((October 11, 2009))~~ July 1, 2010, through June 30, ~~((2010))~~ 2011:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$(1,791.00) <u>1,911.00</u>	\$(1,481.00) <u>1,615.00</u>
Jumbo	((1,742.00)) <u>1,862.00</u>	((1,446.00)) <u>1,580.00</u>
Super	((1,650.00)) <u>1,755.00</u>	((1,365.00)) <u>1,483.00</u>
Evergreen	((1,153.00)) <u>1,189.00</u>	((925.00)) <u>972.00</u>
Issaquah	((1,256.00)) <u>1,313.00</u>	((1,019.00)) <u>1,086.00</u>
Rhododendron	((874.00)) <u>885.00</u>	((694.00)) <u>713.00</u>
Hiyu	((651.00)) <u>657.00</u>	((531.00)) <u>541.00</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

and district weed control boards as well as other entities. This proposal amends chapter 16-750 WAC by:

- Changing yellow archangel, *Lamiastrum galeobdolon*, from Class C to Class B.
- Changing hairy willow-herb, *Epilobium hirsutum*, from Class C to Class B.
- Changing the designation of hoary alyssum, *Berteroa incana*, on the Class B list.
- Changing the designation of houndstongue, *Cynoglossum officinale*, on the Class B list.
- Changing the designation of Eurasian watermilfoil, *Myriophyllum spicatum*, on the Class B list.

Citation of Existing Rules Affected by this Order: Amending WAC 16-750-011 and 16-750-015.

Statutory Authority for Adoption: Chapter 17.10 RCW. Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-19-147 on September 22, 2010.

Changes Other than Editing from Proposed to Adopted Version: The proposed change to adding English holly, *Ilex aquifolium*, to the Class C noxious weed list was rejected and is therefore not included in the adopted version.

A final cost-benefit analysis is available by contacting Alison Halpern, P.O. Box 42560, phone (360) 902-2053, fax (360) 902-2094, e-mail ahalpern@agr.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 0, Repealed 0.

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

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

Date Adopted: November 3, 2010.

Virgil Butch Klaveano
Chairman

**WSR 10-24-037
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD**

[Filed November 22, 2010, 2:39 p.m., effective December 23, 2010]

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

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county

AMENDATORY SECTION (Amending WSR 09-01-071, filed 12/15/08, effective 1/16/09)**WAC 16-750-011 State noxious weed list—Class B noxious weeds.**

		Will be a "Class B designate" in all lands lying within:	
Name			
(1)	alyssum, hoary <i>Berteroa incana</i>	(a)	regions 1, 2, 5, 6, 8, 9, 10
		(b)	region 3, except Okanogan County
		(c)	Okanogan County, of region 3, except Ranges 29 through 31 East of Townships 37 through 40 North
		(d)	<u>Ferry County of region 4 south of Hwy 20</u>
		(e)	Adams and Whitman counties of region 7.
(2)	<u>archangel, yellow <i>Lamiae</i></u> <u><i>strum</i></u> <u><i>galeobdolon</i></u>	(a)	<u>Clallam County of region 1</u>
		(b)	<u>San Juan County of region 2</u>
		(c)	<u>Cowlitz and Skamania counties of region 8.</u>
(3)	arrowhead, grass-leaved <i>Sagittaria graminea</i>	(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
		(b)	region 2 except Lake Roesiger, Lake Serene, Lake Loma and Echo Lake in Snohomish County
		(c)	region 5 except Mason Lake in Mason County.
((3)) (4)	blackgrass <i>Alopecurus myosuroides</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	Ferry, Stevens, Pend Oreille counties of region 4
		(c)	Adams County of region 7.
((4)) (5)	blueweed <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
		(b)	region 7 except for an area starting at the Stevens County line on SR 291 south to the SR 291 bridge over the Little Spokane River, thence upstream along the Little Spokane River to the first Rutter Parkway Bridge; thence south along the Rutter Parkway to the intersection of Rutter Parkway and Indian Trail Road; thence southerly along Indian Trail Road to a point three miles south (on section line between sections 22 and 27, T-26N, R-42E); thence due west to a point intersecting the line between Ranges 41 and 42; thence north along this line to a point 1/4 mile south of Charles Road; thence northwesterly parallel to Charles Road to a point 1/4 miles south of the intersection of Charles Road and West Shore Road; thence northerly along West Shore Road to the Spokane River (Long Lake); thence southeasterly along the Spokane River to the point of beginning.
((5)) (6)	broom, Scotch <i>Cytisus scoparius</i>	(a)	regions 3, 4, 6, 7, 9, 10.
((6)) (7)	bryony, white <i>Bryonia alba</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	region 7 except Whitman County
		(c)	Franklin and Asotin counties of region 10.
((7)) (8)	bugloss, common <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	region 4 except Stevens and Spokane counties
		(c)	Lincoln, Adams, and Whitman counties of region 7.
((8)) (9)	bugloss, annual <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	Lincoln and Adams counties
		(c)	Whitman County except ranges 43 through 46 East of Townships 16 through 20 North
		(d)	Asotin County of region 10.
((9)) (10)	butterfly bush <i>Buddleja davidii</i>	(a)	Pend Oreille County of region 4

Name	Will be a "Class B designate" in all lands lying within:
((10)) (11) camelthorn <i>Alhagi maurorum</i>	<ul style="list-style-type: none"> (b) Grays Harbor County, and that portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 5 (c) Kittitas County of region 6 (d) Lincoln County of region 7. (a) regions 1, 2, 3, 4, 5, 7, 8, 9 (b) region 6 except those portions of Sections 23, 24, 25, and 29 through 36, T16N, R27E, W.M. lying outside Intercounty Weed District No. 52 and except Sections 1 through 12, T15N, R27E, W.M. in Grant County and except the area west of Highway 17 and north of Highway 26 in Adams County (c) Franklin, Columbia, Garfield, and Asotin counties of region 10 (d) an area beginning at the Washington—Oregon border at the southwest portion of section 5, R32E, T6N, then north to the northwest corner of section 3, R32E, T7N, then east to the northeast corner of section 3, R36E, T7N, then south to southeast portion of section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning.
((11)) (12) carrot, wild <i>Daucus carota</i>	<ul style="list-style-type: none"> (a) regions 3, 7 (except where intentionally cultivated) (b) Spokane and Ferry counties of region 4 (except where intentionally cultivated) (c) region 6, except Yakima County (except where intentionally cultivated) (d) region 9, except Yakima County (except where intentionally cultivated) (e) region 10, except Walla Walla County (except where intentionally cultivated).
((12)) (13) catsear, common <i>Hypochaeris radicata</i>	<ul style="list-style-type: none"> (a) regions 3, 4, 6, 7, 10 (b) region 9 except Klickitat County.
((13)) (14) chervil, wild <i>Anthriscus sylvestris</i>	<ul style="list-style-type: none"> (a) regions 1, 3, 4, 5, 6, 7, 9, 10 (b) region 2 except Guemes Island in Skagit County (c) region 8 except Clark County.
((14)) (15) cinquefoil, sulfur <i>Potentilla recta</i>	<ul style="list-style-type: none"> (a) regions 1, 3, 8, 10 (b) region 2 except Skagit County (c) region 4 except Stevens, Ferry, and Pend Oreille counties (d) region 5 except Thurston County (e) region 6 except Yakima County (f) region 7 except Spokane County (g) region 8 except Lewis County (h) region 9 except Klickitat County.
((15)) (16) daisy, oxeye <i>Leucanthemum vulgare</i>	<ul style="list-style-type: none"> (a) regions 7, 10 (b) region 9 except those areas lying within Klickitat and Yakima counties west of Range 13 East (c) region 6 except those areas lying within Yakima and Kittitas counties west of Range 13 E.

Name	Will be a "Class B designate" in all lands lying within:	
((16)) (17)	elodea, Brazilian <i>Egeria densa</i>	(a) regions 3, 4, 6, 7, 9, 10 (b) Lewis County of region 8 (c) Clallam County of region 1 (d) King County of region 5, except lakes Washington, Sammamish, Union and Fenwick.
((17)) (18)	fanwort <i>Cabomba caroliniana</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except T8N, R3W of Cowlitz County.
((18)) (19)	fennel, common <i>Foeniculum vulgare</i> (except var. <i>azoricum</i>)	(a) regions 3, 4, 6, 7, 8, 9, 10 (b) region 1 except the incorporated areas of Port Townsend (c) region 2 except the incorporated areas of Anacortes and Mount Vernon (d) region 5 except King and Kitsap counties.
((19)) (20)	fieldcress, Austrian <i>Rorippa austriaca</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) regions 7 and 10 except within the Palouse River Canyon from Big Palouse Falls to the Snake River.
((20)) (21)	floating heart, yellow <i>Nymphaeodes peltata</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) region 4 except the Spokane River between Long Lake Dam and Nine Mile Dam.
((21)) (22)	gorse <i>Ulex europaeus</i>	(a) regions 1, 3, 4, 6, 7, 9, 10 (b) Skagit, Island, and Whatcom counties of region 2 (c) Thurston, Kitsap, Pierce, and King counties of region 5 (d) Wahkiakum, Clark, Skamania, Cowlitz, and Lewis counties of region 8.
((22)) (23)	hawkweed, mouseear <i>Hieracium pilosella</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 except Thurston County (c) Thurston County lying within T17N, R1W, S31; T16N, R2W, S30 W1/2; T16N, R3W, S25, SE1/4; T16N, R3W, S36, N1/2; T16N, R2W, S31, NW1/4.
((23)) (24)	hawkweed, orange <i>Hieracium aurantiacum</i>	(a) regions 1, 3, 6, 9, 10 (b) Skagit County of region 2 (c) Ferry County of region 4 (d) Pierce, Thurston and King counties of region 5 (e) Lincoln and Adams counties of region 7 (f) Lewis County of region 8.
((24)) (25)	hawkweed, polar <i>Hieracium atratum</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 outside the boundaries of Mt. Rainier National Park.
((25)) (26)	hawkweed, queen-devil <i>Hieracium glomeratum</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) Ferry County of region 4.
((26)) (27)	hawkweed, smooth <i>Hieracium laevigatum</i>	(a) regions 1, 3, 4, 5, 6, 7, 8, 9, 10 (b) San Juan, Island, and Skagit counties of region 2.
((27)) (28)	hawkweed, yellow <i>Hieracium caespitosum</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 10 (b) region 4 except Stevens and Pend Oreille counties (c) region 9 except sections 32, 33 and 34 of T6N, R12E, and sections 4, 5, 6, and 7 of T5N, R12E, and section 12 of T5N, R11E, of Klickitat County.
((28)) (29)	helmet, policeman's <i>Impatiens glandulifera</i>	(a) regions 1, 3, 4, 6, 7, 8, 9, 10 (b) region 2 except Whatcom County

Name	Will be a "Class B designate" in all lands lying within:
	(c) region 5 except Thurston County.
((29)) <u>(30)</u> herb-Robert <i>Geranium robertianum</i>	(a) regions 3, 4, 6, 7, 9, 10
((30)) <u>(31)</u> houndstongue <i>Cynoglossum officinale</i>	(a) Kittitas County of region 6 (b) <u>region 5</u> (c) Douglas and Chelan counties of regions 3 and 6.
((31)) <u>(32)</u> indigobush <i>Amorpha fruticosa</i>	(a) regions 1, 2, 3, 4, 5, 6 (b) regions 7 and 10 except within 200 feet of the Snake River from Central Ferry downstream (c) regions 8, 9, and 10 except within 200 feet of the Columbia River.
((32)) <u>(33)</u> knapweed, black <i>Centaurea nigra</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.
((33)) <u>(34)</u> knapweed, brown <i>Centaurea jacea</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.
((34)) <u>(35)</u> knapweed, diffuse <i>Centaurea diffusa</i>	(a) regions 1, 2, 5, 8 (b) Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M. (c) Adams County except those areas within T15N, R36E, Section 36; T15N, R37E, Sections 22, 26, 27, 28, 31, 32, 33 and 34; T15N, R37E, western half of Sections 23, 24 and 25; T15N, R38E, Sections 2, 10, 11, 14, 15, 19 and 20; T16N, R38E, Sections 34 and 35; T17N, R37E, Sections 5 and 6 (d) Franklin County of regions 9 and 10.
((35)) <u>(36)</u> knapweed, meadow <i>Centaurea jacea x nigra</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.

Name	Will be a "Class B designate" in all lands lying within:	
((36)) (37) knapweed, Russian <i>Acroptilon repens</i>	(a)	regions 1, 2, 5, 7, 8
	(b)	region 4 except that area lying within the boundaries of the Colville Indian Reservation within Ferry County
	(c)	Adams County of region 6 except for the area west of Highway 17 and North of Highway 26
	(d)	Intercounty Weed District No. 52
	(e)	region 10 except Franklin County.
((37)) (38) knapweed, spotted <i>Centaurea stoebe</i>	(a)	regions 1, 2, 3, 5, 6, 9
	(b)	Ferry County of region 4
	(c)	Adams and Whitman counties of region 7
	(d)	region 8, except that portion of Lewis County below the ordinary high watermark of the Tilton River from Hwy. 508 to Lake Mayfield
	(e)	region 10 except Garfield County.
((38)) (39) knotweed, Bohemian <i>Polygonum bohemicum</i>	(a)	Kittitas County of region 6
	(b)	Chelan and Douglas counties of regions 3 and 6
	(c)	Pend Oreille County of region 4
	(d)	Asotin County of region 10.
((39)) (40) knotweed, giant <i>Polygonum sachalinense</i>	(a)	Kittitas County of region 6
	(b)	Pend Oreille County of region 4
	(c)	Asotin County of region 10.
((40)) (41) knotweed, Himalayan <i>Polygonum polystachyum</i>	(a)	Kittitas County of region 6
	(b)	Pend Oreille County of region 4
	(c)	Lewis County of region 8
	(d)	Asotin County of region 10.
((41)) (42) knotweed, Japanese <i>Polygonum cuspidatum</i>	(a)	Kittitas County of region 6
	(b)	Chelan and Douglas counties of regions 3 and 6
	(c)	Pend Oreille County of region 4
	(d)	Asotin County of region 10.
((42)) (43) kochia <i>Kochia scoparia</i>	(a)	Regions 1, 2, 5, 8
	(b)	Pend Oreille County of region 4
	(c)	Kittitas County of region 6.
((43)) (44) laurel, spurge <i>Daphne laureola</i>	(a)	regions 3, 4, 6, 7, 8, 9, 10
	(b)	San Juan, Snohomish and Skagit counties of region 2
	(c)	Grays Harbor and Mason counties of region 5.
((44)) (45) lawnweed <i>Soliva sessilis</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
	(b)	region 5 except King and Thurston counties.
((45)) (46) lepyrodielis <i>Lepyrodielis holosteoides</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
	(b)	region 7 except an area within Whitman County east of the Pullman—Wawawai Road from Wawawai to Pullman and south of State Highway 270 from Pullman to Moscow, Idaho.
((46)) (47) loosestrife, garden <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
	(b)	region 5 except King County
	(c)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.

Name	Will be a "Class B designate" in all lands lying within:
((47)) <u>(48)</u> loosestrife, purple <i>Lythrum salicaria</i>	(a) regions 1, 4, 7, 8 (b) region 2 except Snohomish County (c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside (d) Grays Harbor, Mason, Kitsap, and Thurston counties of region 5 (e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line (f) Pierce County, except those areas lying within T2D, 21, 22N, R1W and R1E, all sections (g) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed (h) region 9 except Benton County (i) region 10 except Walla Walla County (j) Intercounty Weed Districts No. 51 and No. 52.
((48)) <u>(49)</u> loosestrife, wand <i>Lythrum virgatum</i>	(a) regions 1, 4, 7, 8 (b) region 2 except Snohomish County (c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside (d) region 5 except King County (e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line (f) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed (g) region 9 except Benton County (h) region 10 except Walla Walla County (i) Intercounty Weed Districts No. 51 and No. 52.
((49)) <u>(50)</u> nutsedge, yellow <i>Cyperus esculentus</i>	(a) regions 1, 2, 3, 4, 5, 7, 8 (b) region 6 except those areas lying between State Highway 26 and State Highway 28, and westerly of Dodson Road in Grant County, and except S 1/2, Sec. 2, T20N, R25E., W.M. (c) region 9 except:

Name	Will be a "Class B designate" in all lands lying within:
((50)) <u>(51)</u> oxtongue, hawkweed <i>Picris hieracioides</i>	(i) except those areas lying within the following boundary description within Yakima County: Beginning at the intersection of Highway 12 and Parker Heights Road and continuing easterly to Konnowac Pass Road follow said road north to the intersection of Konnowac Pass Road and Nightingale Road. The northern boundary shall be the Roza Canal, continuing from the established point at Nightingale Road. The boundaries will follow the Roza Canal easterly to the County Line Road. The east boundaries will be the Yakima/Benton County Line from a point beginning at the County Line and Highway 22 (near Byron) continuing westerly along Highway 22 (to near the city of Mabton) to the intersection of Highway 22 and the Reservation Boundary (Division Road) and continuing north to the Yakima River. Then it will follow the river northwest to the Wapato-Donald Road continuing north along said road to Highway 12 then Highway 12 to Parker Heights Road.
((51)) <u>(52)</u> parrotfeather <i>Myriophyllum aquaticum</i>	(ii) an area lying southerly of State Route 14 and within T2N, Ranges 13 and 14 E of Klickitat County
((52)) <u>(53)</u> pepperweed, perennial <i>Lepidium latifolium</i>	(d) region 10 except Walla Walla County. (a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except Skamania County. (a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except Clark, Cowlitz, and Wahkiakum counties. (a) regions 1, 2, 3, 4, 5, 7, 8, 10 (b) Intercounty Weed Districts No. 51 and 52 (c) Kittitas County of region 6 (d) Adams County of region 6 except for the area west of Highway 17 and north of Highway 26.
((53)) <u>(54)</u> poison-hemlock <i>Conium maculatum</i>	(a) Clallam County and that area lying within Port Townsend city limits in Jefferson County of region 1 (b) Snohomish and San Juan counties of region 2 (c) Pend Oreille County of region 4 (d) Kitsap and Thurston counties of region 5 (e) Kittitas County of region 6 (f) Lincoln County of region 7 (g) Clark County of region 8.
((54)) <u>(55)</u> primrose, water <i>Ludwigia hexapetala</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except T8N, R3W, S14 of Cowlitz County.
((55)) <u>(56)</u> puncturevine <i>Tribulus terrestris</i>	(a) Skagit County of region 2 (b) Kittitas County of region 6 (c) Adams County (d) Clallam County of region 1.

Name	Will be a "Class B designate" in all lands lying within:
((56)) <u>(57)</u> ragwort, tansy <i>Senecio jacobaea</i>	(a) regions 3, 4, 6, 7, 9, 10 (b) region 5, that portion of Pierce County lying south or east of a boundary beginning at the White River and State Highway 410, then west along State Highway 410 to intersection with State Highway 162 (Orting) to intersection with Orville Road, then south along Orville Road to intersection with Kapowsin Highway (304th Street East), then west following Kapowsin Highway to intersection with State Route 7, then south along State Route 7 to intersection with State Route 702, then west along State Route 702 to intersection with State Route 507, then southwest along State Route 507 to intersection with the Nisqually River.
((57)) <u>(58)</u> reed, common, nonnative genotypes <i>Phragmites australis</i>	(a) region 1 (b) Island, San Juan and Snohomish counties of region 2 (c) Okanogan County of region 3 (d) Pend Oreille and Stevens counties of region 4 (e) region 5 except Grays Harbor and Pierce counties (f) Kittitas County of region 6 (g) Yakima County of regions 6 and 9 (h) Lincoln County of region 7 (i) Clark and Lewis counties of region 8 (j) Klickitat County of region 9 (k) Asotin County of region 10.
((58)) <u>(59)</u> Saltcedar <i>Tamarix ramosissima</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, unless intentionally established prior to 2004 (b) region 6 except Grant County, unless intentionally established prior to 2004 (c) region 9 except Benton and Franklin counties, unless intentionally established prior to 2004 (d) region 10 except Franklin County, unless intentionally established prior to 2004.
((59)) <u>(60)</u> sandbur, longspine <i>Cenchrus longispinus</i>	(a) regions 1, 2, 3, 4, 5, 7, 8 (b) Adams County of region 6 except for that area lying within Intercounty Weed District No. 52 (c) Intercounty Weed District No. 51 (d) Kittitas County of region 6 (e) Asotin County of region 10.
((60)) <u>(61)</u> skeletonweed, rush <i>Chondrilla juncea</i>	(a) regions 1, 2, 3, 5, 8 (b) Franklin County except T13N, R36E; and T14N, R36E (c) Adams County except those areas lying east of a line running north from Franklin County along the western boundary of Range 36 East to State Highway 26 then north on Sage Road until it intersects Lee Road, then due north until intersection with Providence Road, then east to State Highway 261, then north along State Highway 261 to its intersection with Interstate 90, henceforth on a due north line to intersection with Bauman Road, then north along Bauman Road to its terminus, then due north to the Lincoln County line.

Name	Will be a "Class B designate" in all lands lying within:
	(d) region 6 except that portion lying within Grant County that is southerly of State Highway 28, northerly of Interstate Highway 90 and easterly of Grant County Road I Northwest
	(e) Stevens County north of Township 33 North of region 4
	(f) Ferry and Pend Oreille counties of region 4
	(g) region 9 except the Dallesport area in Klickitat County lying within Township 2N, Ranges 13 and 14
	(h) Asotin County of region 10
	(i) Garfield County south of Highway 12
	(j) Columbia County from the Walla Walla County line on Highway 12, all areas south of Turner Road; at Turner Road to the Garfield county line, all areas south and east of Turner Road
	(k) Whitman County lying in Ranges 43 through 46 East of Townships 15 through 20 North; T14N, Ranges 44 through 46 East; and T13N, Ranges 45 and 46 East.
((61)) (62) sowthistle, perennial <i>Sonchus arvensis ssp. arvensis</i>	(a) regions 1, 2, 3, 4, 7, 8, 9, 10
	(b) Adams County of region 6
	(c) region 5 except for sections 28, 29, 30, 31, 32, and 33 in T19N, R1E of Thurston and Pierce counties.
((62)) (63) spurge, leafy <i>Euphorbia esula</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10
	(b) region 7 except as follows:
	(i) T27N, R37E, Sections 34, 35, 36; T27N, R38E, Sections 31, 32, 33; T26N, R37E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 26; T26N, R38E, Sections 5, 6, 7, 8 of Lincoln County
	(ii) T24N, R43E, Section 12, Qtr. Section 3, Parcel No. 9068 of Spokane County.
((63)) (64) spurge, myrtle <i>Euphorbia myrsinites L</i>	(a) Pend Oreille County of region 4
	(b) Along the Asotin, Grande Ronde, and Snake rivers and in all other areas that are not an actively cultivated garden in Asotin County of region 10.
((64)) (65) starthistle, yellow <i>Centaurea solstitialis</i>	(a) regions 1, 2, 3, 5, 6, 8
	(b) region 4 except those areas within Stevens County bounded by a line beginning at the intersection of State Highway 20 and State Highway 25, then north to intersection with Pinkston Creek Road, then east along Pinkston Creek Road to intersection with Highland Loop Road, then south along Highland Loop Road to intersection with State Highway 20, then west along State Highway 20 to intersection with State Highway 25
	(c) region 7 except those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(d) Franklin County
	(e) region 9 except Klickitat County
	(f) lands west of Shumaker Grade and south of Mill Road in Asotin County.

Name	Will be a "Class B designate" in all lands lying within:
((65)) (66) Swainsonpea <i>Sphaerophysa sal-sula</i>	(a) regions 1, 2, 3, 4, 5, 7, 8 (b) Columbia, Garfield, Asotin, and Franklin counties (c) an area beginning at the Washington—Oregon border at the southwest portion of Section 15, R32E, T6N, then north to the northwest corner of Section 3, R32E, T7N, then east to the northeast corner of Section 3, R36E, T7N, then south to the southeast portion of Section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning (d) Weed District No. 3 of Grant County (e) Adams County of region 6.
((66)) (67) thistle, musk <i>Carduus nutans</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) Spokane and Pend Oreille counties.
((67)) (68) thistle, plumeless <i>Carduus acanthoides</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) region 4 except those areas within Stevens County lying north of State Highway 20.
((68)) (69) thistle, Scotch <i>Onopordum acanthium</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) region 7 except for those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border (c) Franklin County.
((69)) (70) toadflax, Dalmatian <i>Linaria dalmatica ssp. dalmatica</i>	(a) regions 1, 2, 5, 8, 10 (b) Douglas County of region 3 lying south of T25N and west of R25E (c) Okanogan County lying within T 33, 34, 35N, R19, 20, 21, 22E, except the southwest, southeast, and northeast quarters of the northeast quarter of section 27, T35N, R21E; and the northeast quarter of the southeast quarter of section 27, T35N, R21E (d) Kittitas, Chelan, Douglas, and Adams counties of region 6 (e) Intercounty Weed District No. 51 (f) Weed District No. 3 of Grant County (g) Lincoln and Adams counties (h) The western two miles of Spokane County of region 7 (i) region 9 except as follows: (i) those areas lying within Yakima County (ii) those areas lying west of the Klickitat River and within Klickitat County.
((70)) (71) watermilfoil, Eurasian <i>Myriophyllum spicatum</i>	(a) regions 1, 9, 10 (b) (region 7 except Spokane County) <u>Okanogan and Chelan counties of region 3</u> (c) (region 8 except within 200 feet of the Columbia River) <u>in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4</u> (d) (Adams County) <u>Chelan and Adams counties of region 6</u>

Name	Will be a "Class B designate" in all lands lying within:
(72) <u>willow-herb, hairy <i>Epilobium hirsutum</i></u>	(e) ((in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4.)) <u>region 7 except Spokane County</u>
	(f) <u>region 8 except within 200 feet of the Columbia River.</u>
	(a) <u>regions 1, 3, 4</u>
	(b) <u>region 2 except Whatcom and Island counties</u>
	(c) <u>region 5 except Thurston County</u>
	(d) <u>region 6 except Grant County</u>
	(e) <u>region 7 except Whitman County</u>
	(f) <u>region 8 except Skamania County</u>
	(g) <u>Yakima County of region 9</u>
(h) <u>region 10 except Franklin County.</u>	

AMENDATORY SECTION (Amending WSR 09-01-071, filed 12/15/08, effective 1/16/09)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
((archangel, yellow	<i>Lamium album</i>
babysbreath	<i>Gypsophila paniculata</i>
beard, old man's	<i>Clematis vitalba</i>
bindweed, field	<i>Convolvulus arvensis</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus armeniacus</i>
canarygrass, reed	<i>Phalaris arundinacea</i>
cockle, white	<i>Silene latifolia ssp. alba</i>
cocklebur, spiny	<i>Xanthium spinosum</i>
cress, hoary	<i>Cardaria draba</i>
dodder, smoothseed alfalfa	<i>Cuscuta approximata</i>
goatgrass, jointed	<i>Aegilops cylindrica</i>
groundsel, common	<i>Senecio vulgaris</i>
hawkweed, common	<i>Hieracium lachenalii</i>
hawkweed, other nonnative species	<i>Hieracium sp.</i> , except species designated in the note in the left-hand column

Note:
 This listing includes all species of *Hieracium*, except the following:

- Species designated as Class A noxious weeds in WAC 16-750-005;
- Species designated as Class B noxious weeds in WAC 16-750-011;
- Native species designated below:
 - Canada hawkweed (*H. canadense*)
 - houndstongue hawkweed (*H. cynoglossoides*)
 - long-beaked hawkweed (*H. longiberbe*)
 - narrow-leaved hawkweed (*H. umbellatum*)
 - slender hawkweed (*H. gracile*)

Common Name	Scientific Name
– western hawkweed (<i>H. albertinum</i>)	
– white-flowered hawkweed (<i>H. albiflorum</i>)	
– woolley-weed (<i>H. scouleri</i>)	
henbane, black	<i>Hyoscyamus niger</i>
iris, yellow flag	<i>Iris pseudacorus</i>
ivy, English, 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'
	<i>Hedera helix</i> 'Baltica'
	<i>Hedera helix</i> 'Pittsburgh'
	<i>Hedera helix</i> 'Star'
mayweed, scentless	<i>Matricaria perforata</i>
pondweed, curly-leaf	<i>Potamogeton crispus</i>
rye, cereal	<i>Secale cereale</i>
spikeweed	<i>Hemizonia pungens</i>
St. Johnswort, common	<i>Hypericum perforatum</i>
tansy, common	<i>Tanacetum vulgare</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
toadflax, yellow	<i>Linaria vulgaris</i>
water lily, fragrant	<i>Nymphaea odorata</i>
whitetop, hairy	<i>Cardaria pubescens</i>
((willow-herb, hairy	<i>Epilobium hirsutum</i>))
wormwood, absinth	<i>Artemisia absinthium</i>

**WSR 10-24-044
 PERMANENT RULES
 DEPARTMENT OF LICENSING**

[Filed November 24, 2010, 10:19 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.
 Purpose: The proposed rule change will increase license fees in order to maintain a balanced budget for the cemetery licensing program.
 Citation of Existing Rules Affected by this Order: Amending WAC 98-70-010 Cemetery fees.
 Statutory Authority for Adoption: RCW 68.05.205.
 Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 10-19-138 on September 22, 2010.

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

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

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

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

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

Date Adopted: November 24, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-17-115, filed 8/18/09, effective 9/18/09)

WAC 98-70-010 Fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Certificate of authority	
Application	\$300.00
Renewal	\$6.20
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Application	\$210.00
Renewal	\$((6-50)) <u>8.00</u>
((Charge per cremation performed during the preceding calendar year))	
<u>Crematory endorsement renewal</u>	
<u>Charge per cremation performed during previous calendar year:</u>	
<u>Charge per cremation performed before 1/1/2011.</u>	<u>\$6.50</u>
<u>Charge per cremation performed on or after 1/1/2011.</u>	<u>\$8.00</u>
Prearrangement sales license	
Application	\$250.00
Renewal	\$((200.00)) <u>225.00</u>
Exemption from prearrangement sales license	

Permanent

Title of Fee	Fee
Application	\$70.00
Renewal	\$35.00
Cremated remains disposition permit or endorsement	
Application	\$70.00
Renewal	\$35.00

**WSR 10-24-046
PERMANENT RULES
DEPARTMENT OF LICENSING**

[Filed November 24, 2010, 11:20 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The amendment increases license fees in order to maintain a balanced budget for the funeral director and embalmer licensing program.

Citation of Existing Rules Affected by this Order: Amending WAC 308-48-800 Funeral director/embalmer fees.

Statutory Authority for Adoption: RCW 18.39.050 and 18.39.175.

Other Authority: Chapter 34.05 RCW and RCW 43.24.086.

Adopted under notice filed as WSR 10-19-129 on September 22, 2010.

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

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

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

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

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

Date Adopted: November 24, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-17-116, filed 8/18/09, effective 9/18/09)

WAC 308-48-800 Funeral director/embalmer fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination application	\$100.00

Title of Fee	Fee
Renewal	((140.00)) <u>150.00</u>
Late renewal penalty	35.00
Duplicate	25.00
Embalmer intern:	
Intern application	((125.00)) <u>135.00</u>
Application for examination	100.00
Intern renewal	((90.00)) <u>100.00</u>
Duplicate	25.00
Funeral director:	
State examination application	100.00
Renewal	((140.00)) <u>150.00</u>
Late renewal penalty	35.00
Duplicate	25.00
Funeral director intern:	
Intern application	((125.00)) <u>135.00</u>
Application for examination	100.00
Intern renewal	((90.00)) <u>100.00</u>
Duplicate	25.00
Funeral establishment:	
Original application	400.00
Renewal	((300.00)) <u>325.00</u>
Branch registration	350.00
Branch renewal	((300.00)) <u>325.00</u>
Preneed application	250.00
Preneed renewal:	((200.00)) <u>225.00</u>
Crematory endorsement registration	210.00
Crematory endorsement renewal	((6.50))
Charge per cremation performed during previous calendar year(-):	<u>8.00</u>
<u>Charge per cremation performed before 1/1/2011.</u>	<u>6.50</u>
<u>Charge per cremation performed on or after 1/1/2011.</u>	<u>8.00</u>
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00
Retired status certificate	No fee

WSR 10-24-047
PERMANENT RULES
DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)
[Filed November 24, 2010, 11:31 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of the changes to chapter 246-840 WAC is to establish continuing competency mechanisms for nurses under the statutory authority of RCW 18.79.010 and 18.79.110. The new rules create requirements for documentation of continuing competency, components of active practice and continuing education, and auditing. Four existing rules were amended to include references to the new rules.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-010, 246-840-020, 246-840-111, and 246-840-120.

Statutory Authority for Adoption: RCW 18.79.010 and 18.79.110.

Adopted under notice filed as WSR 10-16-117 on August 2, 2010.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to make the rules clear and consistent. All changes were editing and did not change the content of the rule. A section was deleted that appeared in WAC 246-840-204 and 246-840-205. This section referenced nursing practice in United States jurisdictions. The commission decided that practice occurs anywhere and is not limited to United States jurisdictions.

A final cost-benefit analysis is available by contacting Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail terry.west@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 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 10, 2010.

Paula R. Meyer, MSN, RN
Executive Director

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-010 Definitions. (1) An "advanced registered nurse practitioner (ARNP)" is a registered nurse who has had formal graduate education and has achieved national specialty certification for the nurse practitioner, nurse anes-

thetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

(3) "Client advocate" means a licensed registered nurse or practical nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and/or choices by providing the client ~~((has))~~ with adequate information about their care and options.

(4) "Commission" means the Washington state nursing care quality assurance commission.

(5) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(6) "Conditional approval" of a school of nursing is the approval given a school of nursing that has not met the requirements of the law and the rules and regulations of the commission; conditions are specified that must be met within a designated time to rectify the deficiency.

(7) "Delegation" means the licensed practical nurse or registered nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability for the nursing care of the client. The licensed practical nurse or registered nurse delegating the task supervises the performance of the unlicensed person. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(a) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

(8) "Faculty" means persons who are responsible for the educational nursing program and who hold faculty appointment in the school.

(9) "Full approval" of a school of nursing is the approval signifying that a nursing program meets the requirements of the law and the rules and regulations of the commission.

(10) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own, receipt of the examination results after thirty days after the nurse technician's date of graduation, or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(11) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(12) "Immediately available" as applied to nursing technicians, means that a registered nurse who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed. This may include the use of two-way communication devices which allow conversation between the nursing technician and a registered nurse who has agreed to act as supervisor.

(a) In a hospital setting, a registered nurse who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(b) In a nursing home setting, a registered nurse who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(13) "Initial approval" of nursing programs is the approval given a new nursing program based on its proposal prior to the graduation of its first class.

(14) "Limited educational authorization" is an authorization to perform clinical training through a commission approved refresher course. This authorization does not permit practice for employment. A limited educational authorization may be issued to:

(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or

(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.

(15) "Minimum standards of competency" means the knowledge, skills and abilities that are expected of the beginning practitioner.

(16) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching/learning component in clinical settings.

(17) "Nurse administrator" is an individual who meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this posi-

tion may include, among others, dean, director, coordinator or chairperson.

(18) "Nursing technician" means a nursing student preparing for registered nurse licensure who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, and who:

(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period.

(c) Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in subsection (16) of this section.

(19) "Philosophy" means the beliefs and principles upon which the curriculum is based.

(20) "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

(21) "Registered nurse" as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).

(22) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(23) "Traditional program of nursing" means a program that has a curriculum which includes a faculty supervised teaching/learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-020 ((Documents)) Credentials issued to nurses in Washington. The following credentials are issued to nurses in Washington.

(1) Active status license. A license is issued upon completion of all requirements for licensure. The license holder may use the title licensed practical nurse or registered nurse and the use of its abbreviation, LPN or RN. The license allows practice as a licensed practical nurse or registered nurse in the state of Washington. See WAC 246-840-201 through 246-840-207 for continuing competency program requirements.

A student who has graduated from a basic professional nursing course and who is pursuing a baccalaureate degree in nursing, an advanced degree in nursing or an advanced certification in nursing must hold an active Washington RN license before participating in the practice of nursing as required to fulfill the learning objectives in a clinical course.

(2) Inactive status license. A license issued to a person previously holding an active license in this state, is in good standing, and does not practice in Washington state. Refer to chapter 246-12 WAC, Part 4.

(3) Advanced registered nurse practitioner (ARNP) license. An ARNP license may be issued to any person who meets the requirements of the commission as contained in WAC 246-840-300 through 246-840-365. Only persons holding this license have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which indicates that the person is entitled to practice at an advanced and specialized role as a nurse practitioner, a nurse midwife, or a nurse anesthetist. The ARNP may engage in the scope allowed for his or her area of national certification as approved by the commission. The license is valid only with a current registered nurse license. The ARNP's scope of practice is defined by national certification standards and approved by the commission.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-111 Expired license. (1) If the license has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has expired for more than three years and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements of chapter 246-12 WAC, Part 2;

(c) Meet the continuing competency requirements of WAC 246-840-201 through 246-840-207.

(3) If the license has expired for more than three years and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Successfully complete a commission approved refresher course. The practitioner will be issued a limited educational license to enroll in the refresher course. The limited educational license is valid only while working under the

direct supervision of a preceptor and is not valid for employment as a licensed practical or registered nurse;

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-120 Inactive credential. (1) A practitioner may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4 and WAC 246-840-204.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements of chapter 246-12 WAC, Part 4;

(c) Meet the requirements of WAC 246-840-201 through 246-840-207.

(4) Practitioners with an inactive credential for more than three years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully complete a commission approved refresher course. The practitioner will be issued a limited educational license to enroll in the refresher course. The limited educational license is valid only while working under the direct supervision of a preceptor and is not valid for employment as a licensed practical or registered nurse;

(b) Meet the requirements of chapter 246-12 WAC, Part 4.

DOCUMENTING CONTINUING COMPETENCY

NEW SECTION

WAC 246-840-201 Continuing competency purpose statement. Patients, families, and communities expect safe, competent, and compassionate nursing care. These rules establish a self-directed continuing competency program that includes participation in active practice, self-assessment and reflection, and continuing nursing education for registered nurses and licensed practical nurses, as a mechanism to help keep patients safe and improve nursing practice.

NEW SECTION

WAC 246-840-202 Continuing competency definitions. The definitions in this section apply throughout WAC 246-840-201 through 246-840-207 unless the context clearly requires otherwise.

(1) **Active nursing practice** means engagement in paid, unpaid, or volunteer activity performing acts requiring a nursing license as described in RCW 18.79.040, 18.79.050, or 18.79.060. Active nursing practice may include working

as a nursing administrator, nursing quality manager, nursing policy officer, public health nurse, parish nurse, home health nurse, nursing educator, nursing consultant, nursing regulator or any practice requiring nursing knowledge and a nursing license.

(2) **Attestation** means the affirmation by signature of the nurse indicating compliance with the standards and terms of the continuing competency requirements.

(3) **Continuing competency** is the ongoing ability of a nurse to maintain, update and demonstrate sufficient knowledge, skills, judgment, and qualifications necessary to practice safely and ethically in a designated role and setting in accordance with the scope of nursing practice. A nurse achieves continuing competency through active practice, self-assessment and reflection, and continuing nursing education.

(4) **Continuing nursing education** refers to systematic professional learning experiences obtained after initial licensure designed to augment the knowledge, skills, and judgment of nurses and enrich nurses' contributions to quality health care and his or her pursuit of professional career goals. The education hours should relate to the nurse's area of professional practice or areas identified through self-assessment and reflection for professional growth and development. There are various types of continuing nursing education activities. Some involve participant attendance where the pace of the activity is determined by the provider who plans and schedules the activity. Others are designed for completion by the learner, independently, at the learner's own pace and at a time of the learner's choice. Continuing nursing education hours may be obtained through mentorship, certification, presentations, and specialty certification.

(5) **Review period** is three full licensing renewal cycles. For purposes of a compliance audit, the review period will be the three years preceding the audit form due date.

(6) **Self-assessment and reflection** means the process of the nurse assessing his or her active nursing practice to determine strengths and opportunities for new learning. The purpose of this process is for the nurse to assess and reflect on:

(a) Making patient safety a priority;

(b) Familiarity with current laws and rules related to nursing practice; and

(c) Existing knowledge and skills (e.g., infection prevention techniques, open communication, and clinical competency). Nurses complete the self-assessment and reflection process when selecting education and training opportunities in his or her nursing careers.

(7) **Technical assistance** means help provided by commission members or staff based on the needs of the nurse to comply with rules and regulations.

NEW SECTION

WAC 246-840-203 Continuing competency requirements—Active status. (1) Continuing competency applies to registered nurses and practical nurses licensed in Washington state who hold an active license. To renew an active license a registered nurse or a practical nurse must complete the following continuing competency requirements every three years:

(a) Document compliance with the continuing competency requirements every three years. Beginning January 1, 2014, and every three years thereafter, each nurse must sign an attestation on a form provided by the department of health declaring completion of the required active nursing practice and continuing nursing education hours. Each nurse will have a full three years to meet the requirements. The review period begins on the first birth date after receiving the initial license. Nursing practice means the performance of acts requiring substantial specialized nursing knowledge, judgment, and skills described under RCW 18.79.040, 18.79.050, and 18.79.060. For purposes of the continuing competency requirements, the commission recognizes "nursing practice" as being performance in either a paid or unpaid position requiring a nursing license.

(i) A minimum of five hundred thirty-one hours must be in active nursing practice, which may include working as a nursing administrator, nursing quality manager, nursing policy officer, public health nurse, parish nurse, home health nurse, nursing educator, nursing consultant, nursing regulator or any practice requiring nursing knowledge and a nursing license.

(ii) A minimum of forty-five hours must be in continuing nursing education.

(iii) Compliance audit is a review of documents to determine fulfillment of requirements. A continuing competency compliance audit requires a nurse to submit documents demonstrating five hundred thirty-one hours of active nursing practice and forty-five hours of continuing nursing education over a three-year review period.

(A) Continuing nursing education is defined as systematic professional learning experiences obtained after initial licensure designed to augment the knowledge, skills, and judgment of nurses and enrich nurses' contributions to quality health care and his or her pursuit of professional career goals.

(B) Continuing nursing education hours should relate to the nurse's area of professional practice or areas identified through reflection and self-assessment for professional growth and development.

(C) Continuing nursing education hours may be obtained through mentorship, certification, presentations, and specialty certification.

(D) Complete continuing nursing education. Each nurse must complete a minimum of forty-five hours of continuing nursing education in the previous three-year review period.

(E) There are various types of continuing nursing education activities. Some involve participant attendance where the pace of the activity is determined by the provider who plans and schedules the activity. Others are designed for completion by the learner, independently, at the learner's own pace and at a time of the learner's choice.

(F) One quarter credit equals ten to thirty hours. One semester credit equals fifteen to forty-five hours, depending on documentation from the educational institution.

(b) The hours may be accumulated in a single year or spread throughout the three-year review period.

(c) Nurses are encouraged to complete the self-assessment and reflection process when selecting education and training opportunities. This assessment and reflection is for the nurses' own professional development and professional

competence. The assessment and reflection is not submitted to the commission.

(2) Failure to complete the attestation every three years may be grounds to deny the license or place the license on expired status according to WAC 246-12-010 (11)(b) and chapter 34.05 RCW.

NEW SECTION

WAC 246-840-204 Continuing competency requirements—Reactivation from expired status. (1) Beginning January, 2014, if a license has expired for three years or less, to return to active status a registered nurse or practical nurse must:

(a) Meet the requirements of WAC 246-12-040.

(b) Complete an attestation provided by the department indicating the intention to complete a minimum of one hundred seventy-seven hours of active nursing practice and fifteen hours of continuing nursing education within the first year following reactivation.

(2) A nurse renewing an expired license following a review period of less than three years will be audited at the end of the first year following reactivation and must provide documentation of completion of the one hundred seventy-seven active nursing practice hours and fifteen continuing nursing education hours upon renewal.

(3) If the practice hours and continuing nursing education hours required in subsection (1)(b) of this section are not completed within one year of reactivation a license will not be renewed without completion of a refresher course as outlined in WAC 246-840-130.

(4) If a license has expired for more than three years the registered nurse or practical nurse must comply with the requirements of WAC 246-840-111 (2) or (3).

NEW SECTION

WAC 246-840-205 Continuing competency requirements—Reactivation from inactive status. (1) Beginning January 1, 2014, if a license is inactive for less than three years to return to active status a registered nurse or practical nurse must:

(a) Meet the requirement of chapter 246-976 WAC, Part 4;

(b) Complete an attestation provided by the department indicating the intention to complete a minimum of one hundred seventy-seven practice hours of active nursing practice and fifteen continuing nursing education hours within the first year following reactivation.

(2) A nurse reactivating an inactive license following a period of less than three years will be audited and must provide documentation of completion of the one hundred seventy-seven active nursing practice hours and fifteen continuing nursing education hours upon renewal.

(3) If the practice hours and continuing nursing education hours required in subsection (1)(b) of this section are not completed within one year of reactivation a license will not be renewed without completion of a refresher course as outlined in WAC 246-840-130.

(4) If a license has been inactive for three years or more the registered nurse or practical nurse must comply with the

requirements under RCW 18.79.230 and WAC 246-840-120 (3) or (4).

NEW SECTION

WAC 246-840-206 Continuing competency audit process and compliance. (1) The commission shall audit:

(a) All late renewals; and
(b) A percentage up to five percent of registered nurses and practical nurses renewing their license.

(2) The commission will send an audit form to the registered nurse or practical nurse at the address on record with the department.

(3) A registered nurse or practical nurse being audited will have thirty calendar days to complete and submit to the commission the audit form documenting five hundred thirty-one hours of active practice and forty-five hours of continuing nursing education.

(4) To document practice hours a licensed registered nurse or licensed practical nurse may provide:

(a) Verification from employers of hours worked;
(b) Pay stubs showing hours worked or end of year work hours and payment statements;
(c) Verification from an appropriate representative of the institution validating the hours by his or her signature;

(d) A statement including description of the practice setting, whether they were paid or unpaid, a description of duties and responsibilities and the signature of a supervisor. Unpaid practice means providing uncompensated services considered within the scope and domain of the nursing profession. Examples of unpaid practice include: A nurse volunteering time to a church such as a parish nurse or a nurse volunteering nursing services at a community clinic. There is a wide range of opportunities within the nursing profession to participate in unpaid service to the community;

(e) A log book documenting active nursing practice and the signature of a primary health care practitioner verifying the hours;

(f) Verification from an appropriate health care provider documenting the number of hours of home care for a friend or family member.

(5) To document continuing nursing education a registered nurse or a licensed practical nurse may provide:

(a) Certificates of satisfactory course completion and statement describing relevance to professional development plan goals;

(b) A current certificate from a nationally recognized certifying body;

(c) Meeting minutes or meeting attendance rosters documenting participation in professional nursing organizations or employer-sponsored committees;

(d) A final transcript or transcript of classes documenting current progress towards an advanced degree in a field related to nursing practice;

(e) Documentation of completion of a nursing research project as the principal investigator, coinvestigator, or project director. Documentation may include summary of findings, thesis, dissertation, abstract, or granting agency summary;

(f) Publication or submission for publication a health care related article, book chapter, or other scholarly work.

Documentation may include a copy of submitted/published article or book chapter and research;

(g) Presentations on a health care or health care system-related topic. Documentation may include a program brochure, agenda, course syllabi or a letter from the offering provider identifying the nurse's participation;

(h) Documentation of independent study or research. Documentation may include a list of activities and time spent on completing these activities.

NEW SECTION

WAC 246-840-207 Failure to meet continuing competency requirements. (1) A licensed registered nurse or practical nurse must comply with the continuing competency requirements in WAC 246-840-203. A nurse may place his or her license on inactive status as outlined in WAC 246-12-090 if the nurse does not meet the continuing competency requirements. See WAC 246-840-205 for additional steps on reactivation from inactive status.

(2) The commission will send an audit form requesting documentation of the required continuing competency requirements to the registered nurse or practical nurse being audited at the address on record with the department.

(3) If the commission does not receive the required documentation within thirty calendar days of the commission's original request for documentation, a second request will be sent by the commission to the nurse at the address of record with the department.

(4) If the commission does not receive the required documentation within thirty calendar days following the second request, a third request will be sent to the address of record with the department.

(5) If the commission does not receive the required documentation thirty calendar days following the third letter, the commission shall place the license on inactive status.

(6) If the nurse's documentation does not match the hours in the attestation, technical assistance will be provided. Technical assistance may include providing information on the web site or at stakeholder meetings, and reviewing materials and offering assistance on the telephone.

(7) If the nurse cannot provide the required documentation, the nurse may place his or her license on inactive status according to WAC 246-12-090.

(8) If the nurse repeatedly fails to demonstrate continuing competency according to these rules, the nurse may be charged with unprofessional conduct under RCW 18.130.-180, and appropriate disciplinary action will be taken which may include license suspension. License suspension may only occur after a hearing as provided in chapter 34.05 RCW.

WSR 10-24-057

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 29, 2010, 11:05 a.m., effective December 1, 2010]

Effective Date of Rule: December 1, 2010.

Effective Date: In accordance with RCW 34.05.380(3), the effective date of the rule shall be December 1, 2010, which is the date in which the superintendent of public instruction is required to identify persistently lowest-achieving schools under RCW 28A.657.020.

Purpose: E2SSB 6696 (2010 session) establishes a process for identifying "persistently lowest-achieving" schools and required action districts, which are to develop and implement required action plans. The rules: (1) Adopt federal criteria for identifying persistently lowest-achieving schools, (2) establish criteria for the superintendent of public instruction to recommend to the state board of education that a school district be designated as a required action district, and (3) establish the criteria for being released as a required action district.

Statutory Authority for Adoption: RCW 28A.657.020, 28A.657.030, and 28A.657.100.

Adopted under notice filed as WSR 10-20-126 on October 5, 2010.

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: November 10, 2010.

Randy Dorn
Superintendent of
Public Instruction

GENERAL

NEW SECTION

WAC 392-501-707 Authority. The authority for these rules is RCW 28A.657.020, 28A.657.030, and 28A.657.100, which require the superintendent of public instruction to annually identify persistently lowest-achieving schools, to recommend school districts for designation as required action districts to the state board of education, and to make recommendations to the state board of education regarding the release of school districts from being designated as a required action district.

NEW SECTION

WAC 392-501-710 Purpose. The purposes of this chapter are to:

(1) Adopt criteria for identifying persistently lowest-achieving schools;

(2) Establish criteria for recommending to the state board of education school districts for required action; and

(3) Establish exit criteria for districts that receive a required action designation.

PERSISTENTLY LOWEST-ACHIEVING SCHOOLS

NEW SECTION

WAC 392-501-720 Process and criteria for identifying persistently lowest-achieving schools. By December 1, 2010, and annually thereafter, the superintendent of public instruction shall identify persistently lowest-achieving Title I and Title I eligible schools based on the following criteria:

(1) A Title I school that has been identified as being in improvement, corrective action or restructuring in accordance with the 2001 reauthorization of the federal Elementary and Secondary Education Act that:

(a) Is among the lowest-achieving five percent in the all students group in reading and mathematics combined for the past three consecutive years; or

(b) Is a high school that has a weighted-average graduation rate that is less than sixty percent based on the past three years of data.

(2) A secondary school that is eligible for, but does not receive, Title I funds that:

(a) Is among the lowest-achieving five percent of secondary schools in the all students group in reading and mathematics combined for the past three consecutive years; or

(b) Is a high school that has a weighted-average graduation rate that is less than sixty percent based on the past three years of data.

(3) However, the superintendent of public instruction may exclude specific schools from the list based on a case-by-case analysis. The case-by-case analysis shall consider the percentage of overage and under-credited students, whether including the school on the list would be invalid or unreliable due to the small number of students on whom the identification would be based, and on other reasonable contextual conditions that would make it inappropriate for the school to be included on the list.

REQUIRED ACTION SCHOOL DISTRICTS

NEW SECTION

WAC 392-501-730 Process and criteria for recommending to the state board of education school districts for required action. By January 15, 2011, and annually thereafter, the superintendent of public instruction shall recommend to the state board of education school districts for designation as required action districts.

(1) The criteria for recommending designation shall be as follows:

(a) The school district has one or more schools on the persistently lowest-achieving list;

(b) For recommendations in January 2011 only, the school district did not apply for a school improvement grant in the 2009-10 school year application period;

(c) Student achievement in the school or schools on the persistently lowest-achieving list within the school district

has improved at a rate less than the state average in reading and mathematics in the most recent past three years for which data are available as measured by state assessment scores;

(d) Schools on the persistently lowest-achieving school list within school districts that are identified in (a) through (c) of this subsection shall be ranked in priority order based on:

(i) The lowest levels of achievement in the all students group in reading and mathematics combined for the past three consecutive years; and

(ii) The schools with the lowest rate of improvement in reading and mathematics combined for the past three years.

(e) Using the priority ranking in (d) of this subsection, the superintendent shall recommend school districts that have a school or schools that have the lowest levels of achievement and lowest rates of improvement. The number of school districts that shall be recommended shall be based on the availability of federal funds and the amount of funding needed for each identified school. For the 2011 recommendations, no more than half of the federal fund appropriation for school improvement grants shall be utilized for required action districts. All other federal funds will be allocated consistent with the federal school improvement guidelines competitive process.

(2) Notwithstanding subsection (1) of this section, school districts that applied for and received a school improvement grant in the 2009-10 school year application period shall not be eligible for being designated as a required action district until recommendations are made to the state board of education in January 2014, unless the school district does not implement a federal intervention model at each school that received a grant.

EXIT CRITERIA

NEW SECTION

WAC 392-501-740 Exit criteria for required action designation. The superintendent of public instruction shall recommend to the state board of education that a school district be released from being designated as a required action district after the district implements a required action plan for a period of three years if:

(1) The district no longer has a school on the persistently lowest-achieving list; and

(2) The school or schools that were on the persistently lowest-achieving list have a positive improvement trend in reading and mathematics on state assessments in the "all students" category based on the most recent three-year average.

WSR 10-24-059

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed November 29, 2010, 4:02 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To consolidate several proposals, as follows:

- As noted in WSR 10-16-043: WAC 51-50-1005.1 will provide consistency between past and future egress

width requirements in the State Building Code (chapter 51-50 WAC).

- As noted in WSR 10-16-043: WAC 51-54-1000 will provide consistency between past and future egress width requirements in the State Fire Code (chapter 51-54 WAC).
- As noted in WSR 10-16-044: WAC 51-50-0903 Section 903.2.7 will provide consistency between past and future sprinkler requirements in the State Building Code (chapter 51-50 WAC).
- As noted in WSR 10-16-044: WAC 51-54-0900 Section 903.2.7 will provide consistency between past and future sprinkler requirements in the State Fire Code (chapter 51-54 WAC).
- As noted in WSR 10-16-092: WAC 51-54-0500, adds section title and corrects numerical error; WAC 51-54-0900, corrects numerical citation; WAC 51-54-1000, eliminates duplicate language contained in base code and renumbers several sections incorrectly filed as separate WAC sections by repealing and reincorporating the affected sections back into WAC 51-54-1000 (including WAC 51-54-1007, 51-54-1008, 51-54-1009, 51-54-1010, 51-54-1014, 51-54-1015, 51-54-1017, 51-54-1018, 51-54-1019). The purpose is to clarify the rules, resulting in consistent enforcement.
- As noted in WSR 10-16-093: WAC 51-50-0504.3 will provide consistency in construction methods and 51-50-0504.4 will correct a section number.
- As noted in WSR 10-16-094: WAC 51-50-0903 Section 903.2.1.6 will remove obsolete implementation dates and clarify the intent.
- As noted in WSR 10-16-094: WAC 51-54-0900 Section 903.2.1.6 will correct section numbering, remove obsolete implementation dates and clarify the intent.

Citation of Existing Rules Affected by this Order: Repealing WAC 51-54-1007, 51-54-1008, 51-54-1009, 51-54-1010, 51-54-1014, 51-54-1015, 51-54-1017, 51-54-1018 and 51-54-1019; and amending WAC 51-50-0504, 51-50-1005, 51-50-0903, 51-54-1000, 51-54-0900, and 51-54-0500.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Adopted under notice filed as WSR 10-16-043 and 10-16-044 on July 26, 2010, and WSR 10-16-092, 10-16-093, and 10-16-094 on July 30, 2010.

Changes Other than Editing from Proposed to Adopted Version: Consolidated several proposals re: Chapters 51-50 and 51-54 WAC into one CR-103P document, as noted in the Purpose statement, above.

A final cost-benefit analysis is available by contacting Tim Nogler, Managing Director, P.O. Box 41011, Olympia, WA 98504-1011, phone (360) 902-7296, fax (360) 586-0493, e-mail tim.nogler@ga.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 9.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 9.

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 9, Repealed 9.

Date Adopted: October 15, 2010.

John C. Cochran
Chair

NEW SECTION

WAC 51-50-0504 Section 504—Height.

504.3 Stair enclosure pressurization increase. For Group R1 and R2 occupancies in buildings of Type VA construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, the maximum number of stories permitted in Section 504.2 may be increased by one provided the interior exit stairways and ramps are pressurized in accordance with Section 909.20 and Section 909.11.

504.4 Roof structures. (Same as 2009 IBC except Section number revised)

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. ~~((An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.))~~

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m²).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

NEW SECTION

WAC 51-50-1005 Section 1005—Egress width.

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

EXCEPTIONS:

1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

WAC 51-54-0500 Chapter 5—Fire service features.

SECTION 503 FIRE APPARATUS ACCESS ROADS.

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with locally adopted street, road, and access standards.

503.1.1 Buildings and facilities, is not adopted.

503.1.2 Additional access, is not adopted.

503.1.3 High-piled storage, is not adopted.

503.2 Specifications. This section is not adopted.

503.3 Marking. This section is not adopted.

503.4 Obstruction of fire apparatus access roads. This section is not adopted.

SECTION 507 FIRE PROTECTION WATER SUPPLIES

507.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined by an approved method.

EXCEPTION: Fire flow is not required for structures under 500 square feet with a B, U or R-1 occupancy where structures are at least 30 feet from any other structure and are used only for recreation.

SECTION 508 FIRE COMMAND CENTER

508.1.2 Separation. The fire command center shall be separated from the remainder of the building by not less than a 2-hour fire barrier constructed in accordance with Section 707 of the International Building Code or horizontal assembly constructed in accordance with Section 712 of the International Building Code, or both.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m²).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

~~(903.6.3 Nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.)~~

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

[F] 907.2.8.4. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units shall be equipped with carbon monoxide alarms by July 1, 2011.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

~~(907.2.9.1)~~ [F] 907.2.9.1.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

[F] 907.2.9.3 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.10.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of Operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

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

AMENDATORY SECTION (Amending WSR 09-04-027, filed 1/28/09, effective 7/1/10)

WAC 51-54-1000 Chapter 10—Means of egress.

~~((1008.1.2 Door swing. Egress doors shall be side-hinged swinging.~~

EXCEPTIONS:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side swinging doors with out closers shall not exceed a 5-pound (22 N) force. For other side swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:
 - 2.1 The locking device is readily distinguishable as locked.
 - 2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and
 - 2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.
3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door knob or surface-mounted hardware.
4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or

security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:

- 5.1 The clinical needs of one or more patients require specialized security measures for their safety;
- 5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;
- 5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;
- 5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and
- 5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1009.12 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1014.2.2 Group I-2. Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.1 Definition. For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire resistance-rated construction unless required by another section of this Code.

1014.2.3 Suites in patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.
2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.3.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.3.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other.

1014.2.3.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).

1014.2.4 Suites in areas other than patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

1014.2.4.1 Area. Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.4.2 Exit access. Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors remotely located from each other.

1014.2.4.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

1014.2.4.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1014.2.5 Travel distance. The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.6 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

1015.1 Exits or exit access doorways from spaces. Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

EXCEPTION: Group I-2 Occupancies shall comply with Section 1014.2.2.

**TABLE 1015.1
SPACES WITH ONE MEANS OF EGRESS**

OCCUPANCY	MAXIMUM OCCUPANT LOAD
A, B, E ^a , F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

1015.1.1 Three or more exits or exit access doorways. Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

1019.1 Exits from stories. All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except

as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

**TABLE 1019.1
MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD**

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

1019.2 Buildings with one exit. Only one exit shall be required in buildings as specified below:

1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.

2. Buildings of Group R-3 Occupancy.

3. Single level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.

**TABLE 1019.2
BUILDINGS WITH ONE EXIT**

OCCUPANCY	MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
A, B ^d , E ^a , F, M, U	1 Story	49 occupants and 75 feet travel distance
H-2, H-3	1 Story	3 occupants and 25 feet travel distance
H-4, H-5, I, R	1 Story	10 occupants and 75 feet travel distance
S ^a	1 Story	29 occupants and 100 feet travel distance
B ^b , F, M, S ^a	2 Stories	30 occupants and 75 feet travel distance
R-2	2 Stories ^e	4 dwelling units and 50 feet travel distance

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for open parking structures, see Section 1019.1.1.

b. For the required number of exits for air traffic control towers, see Section 412.1.

e. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.

d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.

e. Day care maximum occupant load is 10.)

SECTION 1005 EGRESS WIDTH

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

EXCEPTIONS:

1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

SECTION 1007 ACCESSIBLE MEANS OF EGRESS

1007.1 Accessible means of egress required. Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress are required by Section 1015.1 or 1021.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

EXCEPTIONS:

1. Accessible means of egress are not required in alterations to existing buildings.
2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1007.3, 1007.4 or 1007.5.
3. In assembly areas with sloped or stepped aisles, one accessible means of egress is permitted where the common path of travel is accessible and meets the requirements in Section 1028.8.
4. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

1007.8 Two-way communication. A two-way communication system shall be provided at the elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge complying with Sections 1007.8.1 and 1007.8.2.

EXCEPTIONS:

1. Two-way communication systems are not required at the elevator landing where two-way communication

is provided within the areas of refuge in accordance with Section 1007.6.3.

2. Two-way communication systems are not required on floors provided with exit ramps conforming to provisions of Section 1010.

1007.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

SECTION 1008 DOORS, GATES AND TURNSTILES

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

EXCEPTIONS:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

1008.1.9.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

- 2.1 The locking device is readily distinguishable as locked;

2.2 A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Approved, listed locks without delayed egress shall be permitted in Group R-2 boarding homes licensed by Washington state, provided that:

6.1. The clinical needs of one or more patients require specialized security measures for their safety.

6.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

6.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

6.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

6.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1008.1.9.6 Special locking arrangements in Group I-2. Approved locks shall be permitted in a Group I-2 Occupancy where the clinical needs of persons receiving care require such locking. Locks shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

4. The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the International Fire Code.

5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

6. Emergency lighting shall be provided at the door.

EXCEPTION: Items 1, 2, 3, and 5 shall not apply to doors to areas where persons which because of clinical needs require

restraint or containment as part of the function of a Group I-2 mental hospital provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

SECTION 1009 STAIRWAYS

1009.15 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

SECTION 1010 RAMPS

1010.1 Scope. The provisions of this section shall apply to ramps used as a component of a means of egress.

- EXCEPTIONS:
1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through 1108.2.4 and 1108.2.6, ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1028.11.
 2. Curb ramps shall comply with ICC A117.1.
 3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections 1010.3 through 1010.9 when they are not an accessible route serving accessible parking spaces or other required accessible elements.
 4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections 1010.4 through 1010.8.

SECTION 1014 EXIT ACCESS

1014.2.2 Group I-2. General. Habitable spaces and suites in Group I-2 Occupancies are permitted to comply with this Section 1014.2.2.

1014.2.2.1 Exit access doors. Habitable spaces and suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.2 Exit access through suites. Exit access from areas not classified as a Group I-2 Occupancy suite shall not pass through a suite. In a suite required to have more than one exit, one exit access may pass through an adjacent suite if all other requirements of Section 1014.2 are satisfied.

1014.2.2.3 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 711. Partitions within suites are not required to be smoke-resistant or fire-resistance-rated unless required by another section of this Code.

1014.2.2.4 Suites containing patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites with one intervening room if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.
2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.2.4.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.2.4.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.4.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm). The travel distance between any point in a Group I-2 Occupancy patient sleeping room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.2.5 Suites not containing patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites that comply with Sections 1014.2.2.5.1 through 1014.2.2.5.4.

1014.2.2.5.1 Area. Suites of rooms, other than patient sleeping rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.2.5.2 Exit access. Any room or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.5.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite to the exit access door is not greater than 100 feet (30,480 mm).

1014.2.2.5.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

SECTION 1018 CORRIDORS

1018.5 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

EXCEPTIONS:

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted, provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of one thousand square feet (93 m²) or less in area, utilization of corridors for conveying return air is permitted.
4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units subject to the following:
 - 6.1 The air supplied to the corridor is one hundred percent outside air; and
 - 6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and

6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or

6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

1018.6 Corridor continuity. Fire-resistance-rated corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms.

EXCEPTIONS:

1. Foyers, lobbies or reception rooms constructed as required for corridors shall not be construed as intervening rooms.
2. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, seating areas shall be allowed to be open to the corridor provided:
 - 2.1 The seating area is constructed as required for the corridor;
 - 2.2 The floor is separated into at least two compartments complying with Section 407.4;
 - 2.3 Each individual seating area does not exceed 150 square feet, excluding the corridor width;
 - 2.4 The combined total space of seating areas per compartment does not exceed 300 square feet, excluding the corridor width;
 - 2.5 Combustible furnishings located within the seating area shall be in accordance with the International Fire Code Section 805; and
 - 2.6 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

WAC 51-54-4600 Chapter 46—Existing buildings.

CHAPTER 46 CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS

SECTION 4601 GENERAL

4601.1 Scope. The provisions of this chapter shall apply to existing buildings constructed prior to the adoption of this Code.

4601.2 Intent. The intent of this chapter is to provide a minimum degree of fire and life safety to persons occupying buildings by providing for alterations to such existing buildings that do not comply with the minimum requirements of the International Building Code.

4601.3 Permits. Permits shall be required as set forth in Section 105.7 and the International Building Code and this Code.

4601.4 Owner notification. Where a building is found to be in noncompliance, the fire code official shall duly notify the owner of the building. Upon receipt of such notice, the owner shall, subject to the following time limits, take necessary actions to comply with the provisions of this chapter.

4601.4.1 Construction documents. Construction documents for the necessary alterations shall be completed within a time schedule approved by the fire code official.

4601.4.2 Completion of work. Work on the required alterations to the building shall be completed within a time schedule approved by the fire code official.

4601.4.3 Extension of time. The fire code official is authorized to grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based on the showing of good cause and subject to the filing of an acceptable systematic plan of correction with the fire code official.

SECTION 4602 DEFINITIONS

4602.1 Definitions. The following word and term shall, for the purpose of this chapter and as used elsewhere in this Code, have the meaning shown herein.

EXISTING. Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this Code.

SECTION 4603 FIRE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

4603.1 Required construction. Existing buildings shall comply with not less than the minimum provisions specified in Table 4603.1 and as further enumerated in Sections 4603.2 through 4603.7.3.

The provisions of this chapter shall not be construed to allow the elimination of fire protection systems or a reduction in the level of fire safety provided in buildings constructed in accordance with previously adopted codes.

EXCEPTION: Group U occupancies.

4603.2 Elevator operation. Existing elevators with a travel distance of 25 feet (7620 mm) or more above or below the main floor or other level of a building and intended to serve the needs of emergency personnel for firefighting or rescue

purposes shall be provided with emergency operation in accordance with ASME A17.3.

4603.3 Vertical openings. Interior vertical shafts, including, but not limited to, stairways, elevator hoistways, service and utility shafts, that connect two or more stories of a building, shall be enclosed or protected as specified in Sections 4603.3.1 through 4603.3.7.

4603.3.1 Group I occupancies. In Group I occupancies, interior vertical openings connecting two or more stories shall be protected with 1-hour fire-resistance-rated construction.

4603.3.2 Three to five stories. In other than Group I occupancies, interior vertical openings connecting three to five stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

- EXCEPTIONS:
1. Vertical opening protection is not required for Group R-3 occupancies.
 2. Vertical opening protection is not required for open parking garages and ramps.
 3. Vertical opening protection is not required for escalators.

4603.3.3 More than five stories. In other than Group I occupancies, interior vertical openings connecting more than five stories shall be protected by 1-hour fire-resistance-rated construction.

- EXCEPTIONS:
1. Vertical opening protection is not required for Group R-3 occupancies.
 2. Vertical opening protection is not required for open parking garages and ramps.
 3. Vertical opening protection is not required for escalators.

**TABLE 4603.1
OCCUPANCY AND USE REQUIREMENTS**

SECTION	USE			OCCUPANCY CLASSIFICATION																			
	High Rise	Atrium and covered mall	Underground building	A	B	E	F	H-1	H-2	H-3	H-4	H-5	I-1	I-2	I-3	I-4	M	R-1	R-2	R-3	R-4	S	
4603.2	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
4603.3.1	R		R											R	R	R	R						
4603.3.2	R		R	R	R	R	R	R	R	R	R	R					R	R	R			R	R
4603.3.3	R		R	R	R	R	R	R	R	R	R	R					R	R	R			R	R
4603.3.4		R																					
4603.3.5					R												R						
4603.3.6				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R	R
4603.3.7				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R	R
4603.4				R			R	R										R					
4603.5	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R			R	R
4603.6.1						R																	
4603.6.2													R										
4603.6.3														R									
4603.6.4															R								
4603.6.5																		R					
4603.6.6																			R				
4603.6.7																						R	
4603.7																		R	R	R	R	R	
4604.4	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

R = The building is required to comply.

4603.3.4 Atriums and covered malls. In other than Group I occupancies, interior vertical openings in a covered mall building or a building with an atrium shall be protected by either 1-hour fire-resistance-rated construction or an auto-

matic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

- EXCEPTIONS:
1. Vertical opening protection is not required for Group R-3 occupancies.

2. Vertical opening protection is not required for open parking garages and ramps.

4603.3.5 Escalators in Group B and M occupancies. Escalators creating vertical openings connecting any number of stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic fire sprinkler system in accordance with Section 903.3.1.1 installed throughout the building, with a draft curtain and closely spaced sprinklers around the escalator opening.

4603.3.6 Escalators connecting four or fewer stories. In other than Group B and M occupancies, escalators creating vertical openings connecting four or fewer stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 shall be installed throughout the building, and a draft curtain with closely spaced sprinklers shall be installed around the escalator opening.

4603.3.7 Escalators connecting more than four stories. In other than Group B and M occupancies, escalators creating vertical openings connecting five or more stories shall be protected by 1-hour fire-resistance-rated construction.

4603.4 Sprinkler systems. An automatic sprinkler system shall be provided in all existing buildings in accordance with Sections 4603.4.1 and 4603.4.2.

4603.4.1 Pyroxylin plastics. An automatic sprinkler system shall be provided throughout existing buildings where cellulose nitrate film or pyroxylin plastics are manufactured, stored or handled in quantities exceeding 100 pounds (45 kg). Vaults located within buildings for the storage of raw pyroxylin shall be protected with an approved automatic sprinkler system capable of discharging 1.66 gallons per minute per square foot (68 L/min/m²) over the area of the vault.

4603.4.2 Group I-2. An automatic sprinkler system shall be provided throughout existing Group I-2 fire areas. The sprinkler system shall be provided throughout the floor where the Group I-2 occupancy is located, and in all floors between the Group I-2 occupancy and the level of exit discharge.

4603.4.3 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. ~~((An existing nightclub constructed prior to July 1, 2006, shall have been provided with automatic sprinklers not later than December 1, 2009-))~~ No building shall be constructed for, used for, or converted to occupancy as a nightclub except in accordance with this section.

4603.5 Standpipes. Existing structures with occupied floors located more than 50 feet (15,240 mm) above or below the lowest level of fire department vehicle access shall be equipped with standpipes installed in accordance with Section 905. The standpipes shall have an approved fire department connection with hose connections at each floor level above or below the lowest level of fire department access. The fire code official is authorized to approve the installation of manual standpipe systems to achieve compliance with this section where the responding fire department is capable of providing the required hose flow at the highest standpipe outlet.

4603.6 Fire alarm systems. An approved fire alarm system shall be installed in existing buildings and structures in accordance with Sections 4603.6.1 through 4603.6.7 and provide occupant notification in accordance with Section 907.6 unless other requirements are provided by other sections of this code.

EXCEPTION: Occupancies with an existing, previously approved fire alarm system.

4603.6.1 Group E. A fire alarm system shall be installed in existing Group E occupancies in accordance with Section 907.2.3.

EXCEPTIONS:

1. A manual fire alarm system is not required in a building with a maximum area of 1,000 square feet (93 m²) that contains a single classroom and is located no closer than 50 feet (15,240 mm) from another building.
2. A manual fire alarm system is not required in Group E occupancies with an occupant load less than 50.

4603.6.2 Group I-1. An automatic fire alarm system shall be installed in existing Group I-1 residential care/assisted living facilities in accordance with Section 907.2.6.1.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2 are not exceeded.
2. Where each sleeping room has a means of egress door opening directly to an exterior egress balcony that leads directly to the exits in accordance with WAC 51-50-1019, and the building is not more than three stories in height.

4603.6.3 Group I-2. An automatic fire alarm system shall be installed in existing Group I-2 occupancies in accordance with Section 907.2.6.2.

EXCEPTION: Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2.1 are not exceeded.

4603.6.4 Group I-3. An automatic and manual fire alarm system shall be installed in existing Group I-3 occupancies in accordance with Section 907.2.6.3.

4603.6.5 Group R-1. A fire alarm system and smoke alarms shall be installed in existing Group R-1 occupancies in accordance with Sections 4603.6.5.1 through 4603.6.5.2.1.

4603.6.5.1 Group R-1 hotel and motel manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels more than three stories or with more than 20 sleeping units.

EXCEPTIONS:

1. Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.
2. Manual fire alarm boxes are not required throughout the building when the following conditions are met:

- 2.1. The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2;
- 2.2. The notification appliances will activate upon sprinkler water flow; and
- 2.3. At least one manual fire alarm box is installed at an approved location.

4603.6.5.1.1 Group R-1 hotel and motel automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels throughout all interior corridors serving sleeping rooms not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

4603.6.5.2 Group R-1 boarding and rooming houses manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses.

EXCEPTION: Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.

4603.6.5.2.1 Group R-1 boarding and rooming houses automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses throughout all interior corridors serving sleeping units not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: Buildings equipped with single-station smoke alarms meeting or exceeding the requirements of Section 907.2.10.1 and where the fire alarm system includes at least one manual fire alarm box per floor arranged to initiate the alarm.

4603.6.6 Group R-2. An automatic or manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-2 occupancies more than three stories in height or with more than 16 dwelling or sleeping units.

EXCEPTIONS:

1. Where each living unit is separated from other contiguous living units by fire barriers having a fire-resistance rating of not less than 0.75 hour, and where each living unit has either its own independent exit or its own independent stairway or ramp discharging at grade.
2. A separate fire alarm system is not required in buildings that are equipped throughout with an approved supervised automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and having a local alarm to notify all occupants.
3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have

a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open-ended corridors designed in accordance with Section 1023.6, Exception 4.

4603.6.7 Group R-4. This section not adopted.

EXCEPTIONS:

1. Where there are interconnected smoke alarms meeting the requirements of Section 907.2.11 and there is at least one manual fire alarm box per floor arranged to continuously sound the smoke alarms.
2. Other manually activated, continuously sounding alarms approved by the fire code official.

4603.7 Single and multiple-station smoke alarms. Single and multiple-station smoke alarms shall be installed in existing Group R occupancies and in dwellings not classified as Group R occupancies in accordance with Sections 4603.7.1 through 4603.7.3.

4603.7.1 Where required. Existing Group R occupancies and dwellings not classified as Group R occupancies not already provided with single-station smoke alarms shall be provided with single-station smoke alarms. Installation shall be in accordance with Section 907.2.10, except as provided in Sections 4603.7.2 and 4603.7.3.

4603.7.2 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

EXCEPTIONS:

1. Interconnection is not required in buildings that are not undergoing alterations, repairs or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

4603.7.3 Power source. Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

EXCEPTIONS:

1. Smoke alarms are permitted to be solely battery operated in existing buildings where no construction is taking place.
2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source.
3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

SECTION 4604 MEANS OF EGRESS FOR EXISTING BUILDINGS

4604.1 General. Means of egress in existing buildings shall comply with Section 1030 and 4604.2 through 4604.23.

EXCEPTION: Means of egress conforming to the requirements of the building code under which they were constructed and Section 1030 shall not be required to comply with 4604.2 through 4604.21.

4604.1.1 Evaluation. Existing buildings that were not required to comply with a building code at the time of construction, and that constitute a distinct hazard to life as determined by the fire official, shall comply with the minimum egress requirements when specified in Table 4603.1 as further enumerated in Sections 4604.2 through 4604.23. The fire official shall notify the building owner in writing of the distinct hazard and, in addition shall have the authority to require a life safety evaluation be prepared, consistent with the requirements of Section 104.7.2. The life safety evaluation shall identify any changes to the means of egress that are necessary to provide safe egress to occupants and shall be subject to review and approval by the fire and building code officials. The building shall be modified to comply with the recommendations set forth in the approved evaluation.

4604.2 Elevators, escalators and moving walks. Elevators, escalators and moving walks shall not be used as a component of a required means of egress.

EXCEPTIONS: 1. Elevators used as an accessible means of egress where allowed by Section 1007.4.
2. Previously approved escalators and moving walks in existing buildings.

4604.3 Exit sign illumination. Exit signs shall be internally or externally illuminated. The face of an exit sign illuminated from an external source shall have an intensity of not less than 5 foot-candles (54 lux). Internally illuminated signs shall provide equivalent luminance and be listed for the purpose.

EXCEPTION: Approved self-luminous signs that provide evenly illuminated letters shall have a minimum luminance of 0.06 foot-lamberts (0.21 cd/m²).

4604.4 Power source. Where emergency illumination is required in Section 4604.5, exit signs shall be visible under emergency illumination conditions.

EXCEPTION: Approved signs that provide continuous illumination independent of external power sources are not required to be connected to an emergency electrical system.

4604.5 Illumination emergency power. The power supply for means of egress illumination shall normally be provided by the premises' electrical supply. In the event of power supply failure, illumination shall be automatically provided from an emergency system for the following occupancies where such occupancies require two or more means of egress:

1. Group A having 50 or more occupants.

EXCEPTION: Assembly occupancies used exclusively as a place of worship and having an occupant load of less than 300.

2. Group B buildings three or more stories in height, buildings with 100 or more occupants above or below a level of exit discharge serving the occupants or buildings with 1,000 or more total occupants.

3. Group E in interior stairs, corridors, windowless areas with student occupancy, shops and laboratories.

4. Group F having more than 100 occupants.

EXCEPTION: Buildings used only during daylight hours which are provided with windows for natural light in accordance with the International Building Code.

5. Group I.

6. Group M.

EXCEPTION: Buildings less than 3,000 square feet (279 m²) in gross sales area on one story only, excluding mezzanines.

7. Group R-1.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at grade.

8. Group R-2.

EXCEPTION: Where each dwelling unit or sleeping unit has direct access to the outside of the building at grade.

9. Group R-4.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at ground level.

4604.5.1 Emergency power duration and installation. In other than Group I-2, the emergency power system shall provide power for not less than 60 minutes and consist of storage batteries, unit equipment or an on-site generator. In Group I-2, the emergency power system shall provide power for not less than 90 minutes and consist of storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Section 4604.

4604.6 Guards. Guards complying with this section shall be provided at the open sides of means of egress that are more than 30 inches (762 mm) above the floor or grade below.

4604.6.1 Height of guards. Guards shall form a protective barrier not less than 42 inches (1067 mm) high.

EXCEPTIONS: 1. Existing guards on the open side of stairs shall be not less than 30 inches (760 mm) high.
2. Existing guards within dwelling units shall be not less than 36 inches (910 mm) high.
3. Existing guards in assembly seating areas.

4604.6.2 Opening limitations. Open guards shall have balusters or ornamental patterns such that a 6-inch-diameter (152 mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm).

EXCEPTIONS: 1. At elevated walking surfaces for access to, and use of, electrical, mechanical or plumbing systems or equipment, guards shall have balusters or be of solid materials such that a sphere with a diameter of 21 inches (533 mm) cannot pass through any opening.
2. In occupancies in Group I-3, F, H or S, the clear distance between intermediate rails measured at right angles to the rails shall not exceed 21 inches (533 mm).
3. Approved existing open guards.

4604.7 Minimum required egress width. The means of egress width shall not be less than as required by the code under which constructed but not less than as required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the

means of egress multiplied by the factors in Table 4604.7 and not less than specified elsewhere in this section. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less

than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

**TABLE 4604.7
EGRESS WIDTH PER OCCUPANT SERVED**

OCCUPANCY	WITHOUT SPRINKLER SYSTEM		WITH SPRINKLER SYSTEM ^a	
	Stairways (inches per occupant)	Other egress components (inches per occupant)	Stairways (inches per occupant)	Other egress components (inches per occupant)
Occupancies other than those listed below	0.3	0.2	0.2	0.15
Hazardous: H-1, H-2, H-3 and H-4	Not permitted	Not permitted	0.3	0.2
Institutional: I-2	Not permitted	Not permitted	0.3	0.2

For SI: 1 inch = 25.4 mm.

a. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

4604.8 Size of doors. The minimum width of each door opening shall be sufficient for the occupant load thereof and shall provide a clear width of not less than 28 inches (711 mm). Where this section requires a minimum clear width of 28 inches (711 mm) and a door opening includes two door leaves without a mullion, one leaf shall provide a clear opening width of 28 inches (711 mm). The maximum width of a swinging door leaf shall be 48 inches (1219 mm) nominal. Means of egress doors in an occupancy in Group I-2 used for the movement of beds shall provide a clear width not less than 41.5 inches (1054 mm). The height of doors shall not be less than 80 inches (2032 mm).

EXCEPTIONS:

1. The minimum and maximum width shall not apply to door openings that are not part of the required means of egress in occupancies in Groups R-2 and R-3.
2. Door openings to storage closets less than 10 square feet (0.93 m²) in area shall not be limited by the minimum width.
3. Width of door leaves in revolving doors that comply with Section 1008.1.4.1 shall not be limited.
4. Door openings within a dwelling unit shall not be less than 78 inches (1981 mm) in height.
5. Exterior door openings in dwelling units, other than the required exit door, shall not be less than 76 inches (1930 mm) in height.
6. Exit access doors serving a room not larger than 70 square feet (6.5 m²) shall be not less than 24 inches (610 mm) in door width.

4604.9 Opening force for doors. The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding and folding doors, the door latch shall release when subjected to a force of not more than 15 pounds (66 N). The door shall be set in motion when subjected to a force not exceeding 30 pounds (133 N). The door shall swing to a full open position when subjected to a force of not more than 50 pounds (222 N). Forces shall be applied to the latch side.

4604.10 Revolving doors. Revolving doors shall comply with the following:

1. A revolving door shall not be located within 10 feet (3048 mm) of the foot or top of stairs or escalators. A dispersal area shall be provided between the stairs or escalators and the revolving doors.
2. The revolutions per minute for a revolving door shall not exceed those shown in Table 4604.10.
3. Each revolving door shall have a conforming side-hinged swinging door in the same wall as the revolving door and within 10 feet (3048 mm).

EXCEPTIONS:

1. A revolving door is permitted to be used without an adjacent swinging door for street-floor elevator lobbies provided a stairway, escalator or door from other parts of the building does not discharge through the lobby and the lobby does not have any occupancy or use other than as a means of travel between elevators and a street.
2. Existing revolving doors where the number of revolving doors does not exceed the number of swinging doors within 20 feet (6096 mm).

4604.10.1 Egress component. A revolving door used as a component of a means of egress shall comply with Section 4604.10 and all of the following conditions:

1. Revolving doors shall not be given credit for more than 50 percent of the required egress capacity.
2. Each revolving door shall be credited with not more than a 50-person capacity.
3. Revolving doors shall be capable of being collapsed when a force of not more than 130 pounds (578 N) is applied within 3 inches (76 mm) of the outer edge of a wing.

4604.11 Stair dimensions for existing stairs. Existing stairs in buildings shall be permitted to remain if the rise does not exceed 8 1/4 inches (210 mm) and the run is not less than 9 inches (229 mm). Existing stairs can be rebuilt.

EXCEPTION:

Other stairs approved by the fire code official.

TABLE 4604.10
REVOLVING DOOR SPEEDS

INSIDE DIAMETER	POWER-DRIVEN-TYPE SPEED CONTROL (RPM)	MANUAL-TYPE SPEED CONTROL (RPM)
6' 6"	11	12
7' 0"	10	11
7' 6"	9	11
8' 0"	9	10
8' 6"	8	9
9' 0"	8	9
9' 6"	7	8
10' 0"	7	8

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

4604.11.1 Dimensions for replacement stairs. The replacement of an existing stairway in a structure shall not be required to comply with the new stairway requirements of WAC 51-11-1009 where the existing space and construction will not allow a reduction in pitch or slope.

4604.12 Winders. Existing winders shall be allowed to remain in use if they have a minimum tread depth of 6 inches (152 mm) and a minimum tread depth of 9 inches (229 mm) at a point 12 inches (305 mm) from the narrowest edge.

4604.13 Circular stairways. Existing circular stairs shall be allowed to continue in use provided the minimum depth of tread is 10 inches (254 mm) and the smallest radius shall not be less than twice the width of the stairway.

4604.14 Stairway handrails. Stairways shall have handrails on at least one side. Handrails shall be located so that all portions of the stairway width required for egress capacity are within 44 inches (1118 mm) of a handrail.

EXCEPTION: Aisle stairs provided with a center handrail are not required to have additional handrails.

4604.14.1 Height. Handrail height, measured above stair tread nosings, shall be uniform, not less than 30 inches (762 mm) and not more than 42 inches (1067 mm).

4604.15 Slope of ramps. Ramp runs utilized as part of a means of egress shall have a running slope not steeper than one unit vertical in 10 units horizontal (10 percent slope). The slope of other ramps shall not be steeper than one unit vertical in 8 units horizontal (12.5 percent slope).

4604.16 Width of ramps. Existing ramps are permitted to have a minimum width of 30 inches (762 mm) but not less than the width required for the number of occupants served as determined by Section 1005.1.

4604.17 Fire escape stairs. Fire escape stairs shall comply with Sections 4604.17.1 through 4604.17.7.

4604.17.1 Existing means of egress. Fire escape stairs shall be permitted in existing buildings but shall not constitute more than 50 percent of the required exit capacity.

4604.17.2 Protection of openings. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire door assemblies having a minimum 3/4-hour fire-resistance rating.

EXCEPTION: In buildings equipped throughout with an approved automatic sprinkler system, opening protection is not required.

4604.17.3 Dimensions. Fire escape stairs shall meet the minimum width, capacity, riser height and tread depth as specified in Section 4604.10.

4604.17.4 Access. Access to a fire escape from a corridor shall not be through an intervening room. Access to a fire escape stair shall be from a door or window meeting the criteria of Section 1005.1. Access to a fire escape stair shall be directly to a balcony, landing or platform. These shall be no higher than the floor or window sill level and no lower than 8 inches (203 mm) below the floor level or 18 inches (457 mm) below the window sill.

4604.17.5 Materials and strength. Components of fire escape stairs shall be constructed of noncombustible materials. Fire escape stairs and balconies shall support the dead load plus a live load of not less than 100 pounds per square foot (4.78 kN/m²). Fire escape stairs and balconies shall be provided with a top and intermediate handrail on each side. The fire code official is authorized to require testing or other satisfactory evidence that an existing fire escape stair meets the requirements of this section.

4604.17.6 Termination. The lowest balcony shall not be more than 18 feet (5486 mm) from the ground. Fire escape stairs shall extend to the ground or be provided with counter-balanced stairs reaching the ground.

EXCEPTION: For fire escape stairs serving 10 or fewer occupants, an approved fire escape ladder is allowed to serve as the termination.

4604.17.7 Maintenance. Fire escapes shall be kept clear and unobstructed at all times and shall be maintained in good working order.

4604.18 Corridors. Corridors serving an occupant load greater than 30 and the openings therein shall provide an effective barrier to resist the movement of smoke. Transoms, louvers, doors and other openings shall be kept closed or self-closing.

EXCEPTIONS:

1. Corridors in occupancies other than in Group H, which are equipped throughout with an approved automatic sprinkler system.
2. Patient room doors in corridors in occupancies in Group I-2 where smoke barriers are provided in accordance with the International Building Code.
3. Corridors in occupancies in Group E where each room utilized for instruction or assembly has at least one-half of the required means of egress doors opening directly to the exterior of the building at ground level.
4. Corridors that are in accordance with the International Building Code.

4604.18.1 Corridor openings. Openings in corridor walls shall comply with the requirements of the International Building Code.

- EXCEPTIONS:
1. Where 20-minute fire door assemblies are required, solid wood doors at least 1.75 inches (44 mm) thick or insulated steel doors are allowed.
 2. Openings protected with fixed wire glass set in steel frames.
 3. Openings covered with 0.5-inch (12.7 mm) gypsum wallboard or 0.75-inch (19.1 mm) plywood on the room side.
 4. Opening protection is not required when the building is equipped throughout with an approved automatic sprinkler system.

4604.18.2 Dead ends. Where more than one exit or exit access doorway is required, the exit access shall be arranged such that dead ends do not exceed the limits specified in Table 4604.17.2.

EXCEPTION: A dead-end passageway or corridor shall not be limited in length where the length of the dead-end passageway or corridor is less than 2.5 times the least width of the dead-end passageway or corridor.

4604.18.3 Exit access travel distance. Exits shall be located so that the maximum length of exit access travel, measured from the most remote point to an approved exit along the natural and unobstructed path of egress travel, does not exceed the distances given in Table 4604.17.2.

4604.18.4 Common path of egress travel. The common path of egress travel shall not exceed the distances given in Table 4604.18.2.

4604.19 Stairway discharge identification. A stairway in an exit enclosure which continues below its level of exit discharge shall be arranged and marked to make the direction of egress to a public way readily identifiable.

EXCEPTION: Stairs that continue one-half story beyond their levels of exit discharge need not be provided with barriers where the exit discharge is obvious.

4604.20 Exterior stairway protection. Exterior exit stairs shall be separated from the interior of the building as required in Section 1026.6. Openings shall be limited to those necessary for egress from normally occupied spaces.

- EXCEPTIONS:
1. Separation from the interior of the building is not required for buildings that are two stories or less above grade where the level of exit discharge serving such occupancies is the first story above grade.
 2. Separation from the interior of the building is not required where the exterior stairway is served by an exterior balcony that connects two remote exterior stairways or other approved exits, with a perimeter that is not less than 50 percent open. To be considered open, the opening shall be a minimum of 50 percent of the height of the enclosing wall, with the top of the opening not less than 7 feet (2134 mm) above the top of the balcony.
 3. Separation from the interior of the building is not required for an exterior stairway located in a building or structure that is permitted to have unenclosed interior stairways in accordance with Section 1022.
 4. Separation from the interior of the building is not required for exterior stairways connected to open-ended corridors, provided that:
 - 4.1. The building, including corridors and stairs, is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.
 - 4.2. The open-ended corridors comply with Section 1018.
 - 4.3. The open-ended corridors are connected on each end to an exterior exit stairway complying with Section 1026.
 - 4.4. At any location in an open-ended corridor where a change of direction exceeding 45 degrees occurs, a clear opening of not less than 35 square feet (3 m²) or an exterior stairway shall be provided. Where clear openings are provided, they shall be located so as to minimize the accumulation of smoke or toxic gases.

**TABLE 4604.18.2
COMMON PATH, DEAD-END AND TRAVEL DISTANCE LIMITS (by occupancy)**

OCCUPANCY	COMMON PATH LIMIT		DEAD-END LIMIT		TRAVEL DISTANCE LIMIT	
	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)
Group A	20/75 ^a	20/75 ^a	20 ^b	20 ^b	200	250
Group B	75	100	50	50	200	250
Group E	75	75	20	50	200	250
Group F-1, S-1 ^d	75	100	50	50	200	250
Group F-2, S-2 ^d	75	100	50	50	300	400
Group H-1	25	25	0	0	75	75
Group H-2	50	100	0	0	75	100
Group H-3	50	100	20	20	100	150
Group H-4	75	75	20	20	150	175
Group H-5	75	75	20	20	150	200
Group I-1	75	75	20	50	200	250
Group I-2 (Health Care)	NR ^e	NR ^e	NR	NR	150	200 ^c
Group I-3 (Detention and Correctional—Use Conditions II, III, IV, V)	100	100	NR	NR	150 ^c	200 ^c
Group I-4 (Day Care Centers)	NR	NR	20	20	200	250
Group M (Covered Mall)	75	100	50	50	200	400
Group M (Mercantile)	75	100	50	50	200	250
Group R-1 (Hotels)	75	75	50	50	200	250

OCCUPANCY	COMMON PATH LIMIT		DEAD-END LIMIT		TRAVEL DISTANCE LIMIT	
	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)
Group R-2 (Apartments)	75	75	50	50	200	250
Group R-3 (One- and Two-Family)	NR	NR	NR	NR	NR	NR
Group R-4 (Residential Care/Assisted Living)	NR	NR	NR	NR	NR	NR
Group U	75	75	20	50	200	250

For SI: 1 foot = 304.8 mm.

- a. 20 feet for common path serving 50 or more persons; 75 feet for common path serving less than 50 persons.
 - b. See Section 1028.9.5 for dead-end aisles in Group A occupancies.
 - c. This dimension is for the total travel distance, assuming incremental portions have fully utilized their allowable maximums. For travel distance within the room, and from the room exit access door to the exit, see the appropriate occupancy chapter.
 - d. See the International Building Code for special requirements on spacing of doors in aircraft hangars.
 - e. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors placed a distance apart equal to not less than one-third of the length of the maximum overall diagonal dimension of the patient sleeping room or suite to be served, measured in a straight line between exit access doors.
- NR = No requirements.

4604.21 Minimum aisle width. The minimum clear width of aisles shall be:

- 1. Forty-two inches (1067 mm) for aisle stairs having seating on each side.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

- 2. Thirty-six inches (914 mm) for stepped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

- 3. Twenty inches (508 mm) between a stepped aisle handrail or guard and seating when the aisle is subdivided by the handrail.

- 4. Forty-two inches (1067 mm) for level or ramped aisles having seating on both sides.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

- 5. Thirty-six inches (914 mm) for level or ramped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

- 6. Twenty-three inches (584 mm) between a stepped stair handrail and seating where an aisle does not serve more than five rows on one side.

4604.22 Stairway floor number signs. Existing stairs shall be marked in accordance with Section 1022.8.

4604.23 Egress path markings. Existing buildings of Group A, B, E, I, M and R-1 having occupied floors located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be provided with luminous egress path markings in accordance with Section 1024.

EXCEPTION: Open, unenclosed stairwells in historic buildings designated as historic under a state or local historic preservation program.

SECTION 4605 REQUIREMENTS FOR OUTDOOR OPERATIONS

4605.1 Tire storage yards. Existing tire storage yards shall be provided with fire apparatus access roads in accordance with Sections 4605.1.1 and 4605.1.2.

4605.1.1 Access to piles. Access roadways shall be within 150 feet (45,720 mm) of any point in the storage yard where storage piles are located, at least 20 feet (6096 mm) from any storage pile.

4605.1.2 Location within piles. Fire apparatus access roads shall be located within all pile clearances identified in Section 2505.4 and within all fire breaks required in Section 2505.5.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 51-54-1007	Section 1007—Accessible means of egress.
WAC 51-54-1008	Section 1008—Doors, gates and turnstiles.
WAC 51-54-1009	Section 1009—Stairways and handrails.
WAC 51-54-1010	Section 1010—Ramps.
WAC 51-54-1014	Exit access.
WAC 51-54-1015	Reserved.
WAC 51-54-1017	Reserved.
WAC 51-54-1018	Section 1018—Corridors.
WAC 51-54-1019	Reserved.

**WSR 10-24-061
PERMANENT RULES
BUILDING CODE COUNCIL**

[Filed November 29, 2010, 4:40 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To implement changes to the Washington State Residential Code (chapter 51-51 WAC) to clarify issues around foundations and retaining walls.

Citation of Existing Rules Affected by this Order:
Amending WAC 51-51-0403 and 51-51-0404.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Adopted under notice filed as WSR 10-16-095 on July 30, 2010.

A final cost-benefit analysis is available by contacting Tim Nogler, P.O. Box 41011, Olympia, WA 98504-1011, phone (360) 902-7296, fax (360) 586-0493, e-mail tim.nogler@ga.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 2, Repealed 0.

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

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

Date Adopted: October 15, 2010.

John C. Cochran
Chair

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0403 Section R403—Footings.

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads specified in Section R301 and to transmit the resulting loads to the supporting soil within the limitations determined from the characteristics of the soil. Footings shall be supported on undisturbed natural soil or engineered fill. Foundation walls complying with Section R404 or stem walls complying with Section R403.1.3 shall be permitted to support exterior walls, exterior braced wall lines and exterior braced wall panels provided they are supported by continuous footings.

TABLE R403.1
MINIMUM WIDTH OF CONCRETE,
PRECAST OR MASONRY FOOTINGS
(inches)

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	≥4,000
Conventional light-frame construction				
1 floor ^{b,c}	12	12	12	12
2 floors ^{b,c}	15	12	12	12
3 floors ^{b,c}	23	17	12	12
4-inch brick veneer over light frame or 8-inch hollow concrete masonry				
1-story	12	12	12	12
2-story	21	16	12	12

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	≥4,000
3-story	32	24	16	12
8-inch solid or fully grouted masonry				
1-story	16	12	12	12
2-story	29	21	14	12
3-story	42	32	21	16

For SI: 1 inch = 25.4 mm, 1 pound per square foot = 0.0479kPa.

a. Where minimum footing width is 12 inches, use of a single wythe of solid or fully grouted 12-inch nominal concrete masonry units is permitted.

b. Represents the number of floors supported.

c. Footings shall be permitted to support a roof in addition to the stipulated number of floors. Footings supporting a roof only shall be as required for supporting one floor.

R403.1.2 Continuous Footing in Seismic Design Categories D₀, D₁ and D₂. The braced wall panels at exterior walls of buildings located in Seismic Design Categories D₀, D₁ and D₂ shall be supported by continuous footings. All required interior braced wall panels shall be supported on footings at intervals not exceeding 50 feet (15,240 mm).

Figure 403.4(1). Note corrected title and labels:

BASEMENT OR CRAWL SPACE WITH PRECAST CONCRETE FOUNDATION WALL BEARING ON CRUSHED STONE
PRECAST CONCRETE FOUNDATION WALL
CRUSHED STONE FOOTING

Figure 403.4(2). Note corrected title and label:

BASEMENT OR CRAWL SPACE WITH PRECAST CONCRETE FOUNDATION WALL ON SPREAD FOOTING
PRECAST CONCRETE FOUNDATION WALL

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0404 ((Reserved)) Section R404—Foundation and retaining walls.

Table R404.1.1(3). Note corrected title:

10-INCH MASONRY FOUNDATION WALLS WITH REINFORCING WHERE d > 6.75 INCHES^{a,c}

R404.1.2.2 Reinforcement for foundation walls. Concrete foundation walls shall be laterally supported at the top except where permitted in R404.1.2.2.1 and R404.1.2.2.2, and at the bottom where required elsewhere in this code. Horizontal reinforcement shall be provided in accordance with Table R404.1.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.2(2), R404.1.2(3), R404.1.2(4), R404.1.2(5), R404.1.2(6), R404.1.2(7) or R404.1.2(8). Vertical reinforcement for flat basement walls retaining 4 feet (1,219 mm) or more of unbalanced backfill is permitted to be determined in accordance with Table R404.1.2(9).

For basement walls supporting above-grade concrete walls, vertical reinforcement shall be the greater of that required by Tables R404.1.2(2) through R404.1.2(8) or by Section 611.6 for the above-grade wall. In buildings assigned to Seismic Design Category D₀, D₁ or D₂, concrete foundation walls shall also comply with Section R404.1.4.2.

R404.4 Retaining Walls. Retaining walls not supporting a structure that are not laterally supported at the top and that retain in excess of 24 inches (610 mm) of unbalanced fill shall be designed to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning.

WSR 10-24-062
PERMANENT RULES
HEALTH CARE AUTHORITY
(Basic Health Plan)

[Order 10-03—Filed November 30, 2010, 8:27 a.m., effective December 31, 2010]

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

Purpose: To amend chapter 182-25 WAC to revise rules for the basic health plan and to create new rules governing the Washington health program (nonsubsidized basic health).

Citation of Existing Rules Affected by this Order: Amending chapter 182-25 WAC.

Statutory Authority for Adoption: Chapter 70.47 RCW.

Adopted under notice filed as WSR 10-21-077 on October 18, 2010.

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 26, Amended 1, Repealed 14.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 26, Amended 1, Repealed 14.

Number of Sections Adopted Using Negotiated Rule Making: New 26, Amended 1, Repealed 14; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2010.

Jason Siems
Rules Coordinator

Chapter 182-22 WAC

**WASHINGTON HEALTH PLAN AND BASIC
HEALTH PLAN ADMINISTRATION**

PART 1—AUTHORITY AND DEFINITIONS

NEW SECTION

WAC 182-22-100 Authority. The administrator's authority to promulgate and adopt rules is contained in RCW 70.47.050.

NEW SECTION

WAC 182-22-110 Definitions. The definitions in this section apply throughout chapters 182-22, 182-23, 182-24, and 182-25 WAC.

"Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

"Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees or applicants which cannot be resolved in an informal manner to the appellant's satisfaction.

"Basic health plan" or "BHP" means the system of enrollment and payment for subsidized basic health care services administered by the HCA through managed health care systems.

"BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and BHP. Eligibility for BHP Plus is determined by the department of social and health services, based on medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for medicare, and may be required to meet additional DSHS eligibility requirements.

"Copayment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the managed health care system.

"Covered services" means those services and benefits in the applicable BHP or WHP schedule of benefits (as outlined in the member handbook), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, coinsurance and deductible.

"Dependent," as it applies to BHP or WHP, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is younger than age twenty-six, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) A child younger than age twenty-six who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for coverage.

"Disenrollment" means the termination of coverage for an enrollee.

"Effective date of enrollment" means the first date, as established by BHP or WHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

"Eligible full-time employee" means an employee who meets all applicable eligibility requirements and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington state.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

"Eligible part-time employee" means an employee who meets all the criteria in definition "eligible full-time employee" of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

"Employee" means one who is in the employment of an employer, as defined under RCW 50.04.080.

"Employer" means an enterprise licensed to do business in Washington state, as defined under RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

"Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP or WHP, and for whom applicable premium payments have been made.

"Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment, an individual cannot be a member of more than one family.

"Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

"Health care authority" or "HCA" means the Washington state health care authority.

"Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, medicaid personal care, community options program entry system (COPES) or respite care (up to level three).

"Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans'

homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions, government-funded acute health care or mental health facilities except as provided above, chemical dependency facilities, and nursing homes.

"Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

"Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

"Managed health care system" or "MHCS" means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

"Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on medicaid eligibility criteria.

"Medicaid" means the Title XIX medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

"Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

"Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

"Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage.

"Participating employer" means an employer who has been approved for enrollment as an employer group.

"Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

"Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes for enrollment in BHP or WHP.

"Program" means BHP, WHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within chapters 182-22 through 182-24 WAC.

"Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

"Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP or WHP health care benefits to enrollees.

"Schedule of benefits" means the health care services adopted and from time to time amended by the administrator for BHP or WHP, as applicable, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, as described in the member handbook.

"Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

"Subscriber" is a person who applies for coverage on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom the administrator sends notices and communications. The subscriber may be an enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

"Washington health program" means the system of enrollment and payment for nonsubsidized basic health care services administered by the HCA through managed health care systems.

"Washington state resident" or "resident" means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during holidays and scheduled breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition at an accredited secondary school, college, university, technical college, or school of nursing, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

PART 2—GROUP PARTICIPATION

NEW SECTION

WAC 182-22-210 Employer groups. (1) BHP and WHP may accept applications for group enrollment from business owners, their spouses and eligible dependents, and on behalf of their eligible full-time and/or part-time employees, their spouses and eligible dependents.

(2) With the exception of home care agencies, the employer must enroll at least seventy-five percent of all eligible employees within a classification of employees, and the employer must not offer other health care coverage to the same classification of employees. For purposes of this section, a "classification of employees" means a subgroup of employees (for example, part-time employees, full-time employees or bargaining units). Employees who demonstrate in the application process that they have health care coverage from other sources, such as their spouse or a federal program, shall be excluded from the minimum participation calculation.

(3) BHP and WHP may require a minimum financial contribution from the employer for each enrolled employee.

(4) The employer will provide the employees the complete choice of managed health care systems available within the employee's county of residence.

(5) The employer will pay all or a designated portion of the premium, as determined by the administrator, on behalf of the enrollee. It is the employer's responsibility to collect the employee's portion of the premium and remit the entire payment to BHP or WHP, as applicable, and to notify BHP or WHP of any changes in the employee's account.

(6) In the event that an employer group will be disenrolled, all affected employee(s) will be notified prior to the disenrollment, and will be informed of the opportunity to convert their BHP or WHP group membership to individual account(s).

(7) Employees enrolling in BHP or WHP must meet all eligibility requirements.

NEW SECTION

WAC 182-22-220 Home care agencies. BHP and WHP will accept applications from home care agencies under contract with the department of social and health services (DSHS) for group enrollment, with premiums paid by the home care agency or DSHS or a designee, under the provisions for employer groups with the following exceptions or additions:

(1) To qualify for premium reimbursement through DSHS, home care agencies who enroll under the provisions of this section must be under current contract with DSHS as a home care agency, as defined by DSHS.

(2) Home care agencies need not enroll at least seventy-five percent of all eligible employees in BHP or WHP, and

home care agencies may offer other coverage to the same classification of employees.

(3) Home care agencies need not make a minimum financial contribution for each enrolled employee.

(4) Home care agencies are not subject to WAC 182-22-210(5).

(5) Individual home care providers may enroll in BHP or WHP as individuals.

NEW SECTION

WAC 182-22-230 Financial sponsors. (1) A third party may, with the approval of the administrator, become a financial sponsor to BHP or WHP enrollees. Financial sponsors may not be a state agency or a managed health care system.

(2) BHP and WHP may require a minimum financial contribution from financial sponsors who are paid to deliver BHP or WHP services. Sponsors who meet the following criteria will be exempt from the minimum contribution:

(a) Organizations that are not paid to perform any function related to the delivery of BHP or WHP services, and do not receive contributions from other organizations paid to deliver BHP or WHP services;

(b) Charitable, fraternal or government organizations (other than state agencies) that are not paid to perform any function related to the delivery of BHP or WHP services, who receive contributions from other individuals or organizations who may be paid to deliver BHP or WHP services, if the organization can demonstrate all of the following:

(i) Organizational autonomy (the organization's governance is separate and distinct from any organization that is paid to deliver BHP services);

(ii) Financial autonomy and control over the funds contributed (contributors relinquish control of the donated funds);

(iii) Sponsored enrollees are selected by the sponsoring organization from all persons within the geographic boundaries established by the sponsor organization who meet the selection criteria agreed upon by the sponsor organization and the HCA; and

(iv) There is no direct financial gain to the sponsoring entity.

(c) Charitable, fraternal, or government organizations (other than state agencies) that are paid to perform a health care function related to the delivery of BHP services, if the organization can demonstrate all of the following:

(i) The organization's primary purpose is not the provision of health care or health care insurance, including activities as a third-party administrator or holding company;

(ii) There is organizational and financial autonomy (the organization's governance and funding of sponsored enrollees is separate and distinct from the function that is paid to deliver BHP services);

(iii) The selection of sponsored enrollees is made by the organization separate and distinct from the function that is paid to deliver BHP services, and sponsored enrollees are selected from all eligible persons who meet the selection criteria agreed upon by the sponsor organization and the HCA, who live within the geographic boundaries established by the sponsor organization; and

(iv) There is no direct financial gain to the sponsoring entity.

(3) The financial sponsor will establish eligibility for participation in that particular financial sponsor group; however, sponsored enrollees must meet all eligibility requirements.

(4) The financial sponsor will pay all or a designated portion of the premium on behalf of the sponsored enrollee. The financial sponsor must collect the enrollee's portion of the premium, if any, and remit the entire payment to BHP or WHP and to notify BHP or WHP of any changes in the sponsored enrollee's account.

(5) A financial sponsor must inform sponsored enrollees and BHP or WHP of the minimum time period for which they will act as sponsor. At least sixty days before the end of that time period, the financial sponsor must notify sponsored enrollees and BHP or WHP if the sponsorship will or will not be extended.

(6) A financial sponsor must not discriminate for or against potential group members based on health status, race, color, creed, political beliefs, national origin, religion, age, sex or disability.

(7) A financial sponsor must disclose to the sponsored enrollee all the managed health care systems within the enrollee's county of residence, the estimated premiums for each of them, and the BHP or WHP toll-free information number.

(8) BHP and WHP may periodically conduct a review of the financial sponsor group members to verify the eligibility of all enrollees.

PART 3—ADMINISTRATIVE PROCEDURES

NEW SECTION

WAC 182-22-310 Where to find instructions for filing an appeal. (1) WAC 182-22-320 and 182-22-330 cover appeals submitted by or on behalf of BHP and WHP enrollees or applicants. To appeal a decision regarding a child enrolled in BHP Plus or a woman receiving maternity benefits through medical assistance, subscribers must contact the Washington state department of social and health services (DSHS) to request a fair hearing under chapter 388-526 WAC.

(2) WAC 182-22-320 covers appeals of decisions made by the health care authority, such as decisions regarding eligibility, premium, premium adjustments or penalties, enrollment, suspension, disenrollment, or a member's selection of managed health care system (MHCS). Decisions which affect an entire group (for example, the disenrollment of an employer group) should be appealed for the entire group by the employer, home care agency, or financial sponsor, using these same rules.

(3) WAC 182-22-330 covers appeals of decisions made by the enrollee's managed health care system (MHCS), such as decisions regarding coverage disputes or benefits interpretation.

NEW SECTION

WAC 182-22-320 How to appeal health care authority (HCA) decisions. (1) HCA decisions regarding the following may be appealed under this section:

- (a) Eligibility;
- (b) Premiums;
- (c) Premium adjustments or penalties;
- (d) Enrollment;
- (e) Suspension;
- (f) Disenrollment; or
- (g) Selection of managed health care system (MHCS).

(2) To appeal an HCA decision, enrollees or applicants must send a letter of appeal to the HCA. The letter of appeal should be signed by the appealing party and must be received by the HCA within thirty calendar days of the date of the decision. The letter of appeal should include:

- (a) The name, mailing address, and BHP or WHP account number of the subscriber or applicant;
- (b) The name and address of the enrollee or applicant affected by the decision, if that person is not the subscriber on the account;
- (c) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;
- (d) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation; and
- (e) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee, authorizing the appealing party to act on his/her behalf.

(3) When an appeal is received, the HCA will send a notice to the appealing party, confirming that the appeal has been received and indicating when a decision can be expected. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber.

(4) **Initial HCA decisions:** The HCA will conduct appeals according to RCW 34.05.485. The HCA appeals committee or a single presiding officer designated by the HCA will review and decide the appeal. The appealing party may request an opportunity to be present in person or by telephone to explain his or her view. If the appealing party does not request an opportunity to be present to explain, the HCA appeals committee or presiding officer will review and decide the appeal based on the information and documentation submitted.

(5) The HCA will give priority handling to appeals regarding a loss of coverage for an enrollee with an urgent medical need that could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, provided:

- (a) The appeal is received within ten business days of the effective date of the loss of coverage; and
- (b) The enrollee has clearly stated in the letter of appeal or has otherwise notified the HCA that he or she has an urgent medical need.

(6) For all other appeals, the HCA will send the appealing party written notice of the initial HCA decision within sixty days of receiving the letter of appeal. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber. The notice will include the

reasons for the initial decision and instructions on further appeal rights.

(7) **Review of initial HCA decision:** The initial HCA decision becomes the final agency decision unless the HCA receives a valid request for a review from the appealing party.

(a) To be a valid request for review, the appealing party's request may be either verbal or in writing, but must:

- (i) Be received within thirty days of the date of the initial HCA decision.
- (ii) Include a summary of the initial HCA decision being appealed and state why the appealing party believes the decision was incorrect; and
- (iii) Provide any additional information or documentation that the appealing party would like considered in the review.

(b) Requests for review of an initial HCA decision regarding a disenrollment for nonpayment will be reviewed by the office of administrative hearings through a hearing conducted under chapter 34.12 RCW and RCW 34.05.488 through 34.05.494.

(c) All other requests for review of an initial HCA decision will be reviewed by a presiding officer designated by the HCA according to the requirements of RCW 34.05.488 through 34.05.494, with the following exception: These review decisions will be based on the record and documentation submitted, unless the presiding officer decides that an in-person or telephone hearing is needed. If an in-person or telephone hearing is needed, the presiding officer will decide whether to conduct the hearing as an informal hearing or formal adjudicative proceeding.

(d) The presiding officer will issue a written notice of the review decision, giving reasons for the decision, within twenty-one days of receiving the request for review, unless the presiding officer finds that additional time is needed for the decision.

(8) Enrollees who appeal a disenrollment decision that was based on eligibility issues and not related to premium payments may remain enrolled during the appeal process, provided:

- (a) The appeal was submitted according to the requirements of this section; and
- (b) The enrollee:
 - (i) Remains otherwise eligible;
 - (ii) Continues to make all premium payments when due; and
 - (iii) Has not demonstrated a danger or threat to the safety or property of the MHCS or health care authority or their staff, providers, patients or visitors.

(9) Enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.

(10) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.

NEW SECTION

WAC 182-22-330 How to appeal a managed health care system (MHCS) decision. (1) Enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints must follow their MHCS's complaint/appeals process.

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This complaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

(a) Attempting to informally resolve complaints against the enrollee's MHCS;

(b) Investigating and resolving MHCS contractual issues; and

(c) Providing information and assistance to facilitate review of the decision by an independent review organization.

PART 4—AGENCY OPERATIONSNEW SECTION

WAC 182-22-410 Producers. If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed HCA's training program, will be paid a commission for assisting eligible applicants to enroll.

(1) Individual policy commission: Subject to availability of funds, and as a pilot program, HCA will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP or WHP to an eligible individual applicant if that applicant has not been a BHP or WHP member within the previous five years.

(2) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(3) Insurance brokers or agents must provide the prospective applicant with the BHP or WHP toll-free information number and inform them of BHP or WHP benefits, limitations, exclusions, waiting periods, cost sharing, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(4) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP or WHP, except they will not be required to be appointed by the MHCS.

(5) HCA will not pay renewal commissions.

NEW SECTION

WAC 182-22-420 Application processing. Except as otherwise provided, applications for enrollment will be reviewed by HCA within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

NEW SECTION

WAC 182-22-430 Open enrollment. An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

PART 5—MHCS DUTIESNEW SECTION

WAC 182-22-450 MHCS duties. When an MHCS assists applicants in the enrollment process, it must provide them with the toll-free number for BHP or WHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

Chapter 182-23 WAC**WASHINGTON HEALTH PLAN**NEW SECTION

WAC 182-23-010 Definitions. "Standard health questionnaire" or "SHQ" has the same meaning as described in RCW 48.43.018.

"WHP enrollee" or "nonsubsidized enrollee" means an individual who enrolls in WHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in WHP, without subsidy from the HCA.

NEW SECTION

WAC 182-23-020 Eligibility. (1) To be eligible for enrollment in WHP, an individual may have any income level and must:

(a) Not be eligible for free or purchased medicare;

(b) Not be receiving medical assistance from the department of social and health services (DSHS);

(c) Not be enrolled in BHP;

(d) Not be confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(e) Be accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire or SHQ under RCW 48.43.018, or, based upon

the results of the SHQ, the potential enrollee would not qualify for coverage under the Washington state health insurance pool;

(f) Reside in an area of the state served by a managed health care system participating in the plan;

(g) Choose to obtain coverage from a particular managed health care system; and

(h) Pay or have paid on their behalf the full costs for participation in the plan, including the cost of administration, without any subsidy from HCA.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by WHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later determined to have failed to meet WHP's eligibility criteria at the time of enrollment, will be disenrolled.

NEW SECTION

WAC 182-23-040 Washington health benefits. (1)

The administrator shall design and from time to time may revise WHP benefits, according to the requirements of chapter 70.47 RCW, as amended. These benefits will include physician services, prescription drugs and medications, and inpatient and outpatient hospital services, mental health care services, limited chemical dependency services, limited organ transplant services, and all services necessary for prenatal, postnatal and well-child care, and will emphasize proven preventive and primary care services. WHP benefits may include copayments, waiting periods, limitations and exclusions that the administrator determines are appropriate and consistent with the goals and objectives of the plan. WHP benefits will be subject to a nine-month waiting period for preexisting conditions. Exceptions (for example, children up to age nineteen, maternity, prescription drugs, services for a newborn or newly adopted child) are outlined in the schedule of benefits. Credit toward the waiting period will be given for any continuous period of time for which an enrollee was covered under similar health coverage if that coverage was in effect at any time during the three-month period immediately preceding the date of application for coverage under WHP. Similar coverage includes BHP; all DSHS programs administered by the medical assistance administration which have the medicaid scope of benefits; the DSHS program for the medically indigent; Indian health services; most coverages offered by health carriers; and most self-insured health plans. A list of WHP benefits, including copayments, waiting periods, limitations and exclusions, will be provided to the subscriber.

(2) In designing and revising WHP benefits, the administrator will consider the effects of particular benefits, copayments, limitations and exclusions on access to necessary health care services, as well as the cost to the enrollees and to the state, and also will consider generally accepted practices of the health insurance and managed health care industries.

(3) Before enrolling, WHP will provide each applicant with a written description of covered benefits. This includes a description of all copayments, waiting periods, limitations and exclusions. WHP will advise individuals how to access information on the services, providers, facilities, hours of

operation, and information about the managed health care system(s) available to enrollees in a given service area.

(4) WHP will send to all subscribers written notice of any changes in the scope of benefits provided under WHP, or program changes that will affect premiums and member cost sharing at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. The administrator may make available a separate schedule of benefits for children, eighteen years of age and younger, for those dependent children in the plan.

NEW SECTION

WAC 182-23-050 Premiums and cost sharing. (1)

Subscribers or their employer or financial sponsor shall be responsible for paying the full monthly premium to WHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule.

(2) Once WHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by WHP unless the premium has been paid by the due date given. Thereafter, WHP will bill each subscriber or employer or financial sponsor monthly.

(3) Full payment for premiums due must be received by WHP by the date specified on the premium statement. If WHP does not receive full payment of a premium by the date specified on the premium statement, WHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with WHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the enrollee will be disenrolled for nonpayment as set forth herein. Partial payment of premiums due, payment which for any reason cannot be applied to the correct WHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to non-sufficient funds will be regarded as nonpayment.

(4) Enrollees shall be responsible for paying any required copayment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS.

NEW SECTION

WAC 182-23-060 Enrollment in the plan. (1)

Any individual applying for enrollment in WHP must submit a signed, completed WHP application and SHQ. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child and for completion of the SHQ. If an applicant is accepted for enrollment, the applicant's signature acknowl-

edges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook.

(a) Applicants for enrollment must provide evidence of Washington state residence, for example, a valid Washington state driver's license number, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(b) WHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, or MHCS selection.

(c) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment. Intentional submission of false information may result in disenrollment of the subscriber and all enrolled dependents.

(2) Each member may be enrolled in only one WHP account. Each family applying for enrollment must designate an MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for WHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of an MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the WHP member handbook.

(3) Generally, enrollees may change from one MHCS to another only during open enrollment.

(a) If an enrollee moves to a new location in Washington state and their current MHCS is no longer available, they must choose an MHCS in their new service area (county). Until the family is enrolled in a new MHCS, only emergency services are covered in their new location.

(b) Enrollees meeting the requirements of (a) of this subsection are not required to reapply or complete the SHQ so long as there is not a gap in coverage longer than one month.

(4) Enrollees may change between the maximum benefit limits, but only when the subscriber completes a new application and SHQ. All individuals on an account are required to have the same maximum benefit limit.

(5)(a) Not all family members are required to apply for enrollment in WHP; however, any family member for whom application for enrollment is not made at the same time that other family members may apply at any time provided they complete and pass the SHQ, and are otherwise eligible.

(b) Addition of an eligible newborn child or a child newly placed for adoption provided WHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption.

(6) Subscribers must notify WHP within thirty days of any changes that could affect their eligibility or their dependents' eligibility.

(7) Enrollees must annually submit documentation satisfactory to WHP. This process is called recertification and includes the following:

- (a) Washington state residence;
- (b) Medicare ineligibility for enrollees age sixty-five or over and enrollees who have been receiving Social Security disability benefits for twenty-four consecutive months or more;
- (c) Enrollees who fail to comply with a recertification request will be disenrolled.

NEW SECTION

WAC 182-23-070 Disenrollment from WHP. (1) An enrollee or employer group may disenroll effective the first day of any month by giving WHP at least ten days prior notice of the intention to disenroll.

(2) WHP may disenroll any enrollee or group from WHP for good cause, which includes:

- (a) Failure to meet the WHP eligibility requirements;
- (b) Nonpayment of premium;
- (c) Changes in MHCS or program availability when the enrollee's MHCS will no longer be available to him or her and no other MHCS in the area where the enrollee lives is accepting new enrollment in the enrollee's program;
- (d) Fraud, intentional misrepresentation of information or withholding information that the enrollee knew or should have known was material or necessary to accurately determine their eligibility or premium responsibility, failure to provide requested verification of eligibility, or knowingly providing false information;
- (e) Abuse or intentional misconduct;
- (f) Danger or threat to the safety or property of the MHCS or the health care authority or their staff, providers, patients or visitors; and
- (g) Refusal to accept or follow procedures or treatment determined by an MHCS to be essential to the health of the enrollee, when the MHCS has advised the enrollee and demonstrated to the satisfaction of WHP that no professionally acceptable alternative form of treatment is available from the MHCS.

(3) In addition to being disenrolled, any enrollee who knowingly provides false information to WHP or to a participating managed health care system may be held financially responsible for any covered services fraudulently obtained through WHP.

(4) At least ten days prior to the effective date of disenrollment, WHP will send enrollees written notice of disenrollment.

- (a) The notice of disenrollment will:
 - (i) State the reason for the disenrollment;
 - (ii) State the effective date of the disenrollment;
 - (iii) Describe the procedures for disenrollment; and
 - (iv) Inform the enrollee of his or her right to appeal the disenrollment decision as set forth in chapter 182-22 WAC.

(b) A notice of disenrollment will be sent to both the employer or sponsor and to all members of an employer group, home care agency group or financial sponsor group that is disenrolled under these provisions. Enrollees affected by the disenrollment of a group account will be offered coverage under individual accounts. Coverage under individual accounts will not begin unless the premium for individual coverage is paid by the due date for the coverage month. A

one-month break in coverage may occur for enrollees who choose to transfer to individual accounts.

(5) Enrollees who are notified that they will be disenrolled due to incomplete recertification documents shall not be disenrolled if they submit complete documents within thirty days after the disenrollment letter is mailed.

(6) Under the provisions of this subsection, WHP will suspend or disenroll enrollees and groups who do not pay their premiums when due. Partial payment or payment by check which cannot be processed or is returned due to non-sufficient funds will be regarded as nonpayment.

(a) At least ten days before coverage will lapse, WHP will send a delinquency notice to each subscriber whose premium payment has not been received by the due date. The delinquency notice will include a final due date and a notice that WHP coverage will lapse unless payment is received by the final due date.

(b) Except as provided in (c) of this subsection, coverage will be suspended for one month if an enrollee's premium payment is not received by the final due date, as shown on the delinquency notice. WHP will send written notice of suspension to the subscriber, which will include:

- (i) The effective date of the suspension;
- (ii) The due date by which payment must be received to restore coverage after the one-month suspension;
- (iii) Notification that the subscriber and any enrolled dependents will be disenrolled if payment is not received by the final due date; and
- (iv) Instructions for filing an appeal as provided in chapter 182-22 WAC.

(c) Enrollees whose premium payment has not been received by the delinquency due date, and who have been suspended twice within the previous twelve months will be disenrolled for nonpayment as of the effective date of the third suspension.

(d) Enrollees who are suspended and do not pay the premium for the next coverage month by the due date on the notice of suspension will be immediately disenrolled and issued a notice of disenrollment, which will include:

- (i) The effective date of the disenrollment; and
- (ii) Instructions for filing an appeal as provided in WAC 182-22-310.

(7)(a) Unless otherwise specified, enrollees who voluntarily disenroll or are disenrolled from WHP may not reenroll for a period of twelve months from the date their coverage ended and until all other requirements for enrollment have been satisfied. An exception to the twelve-month wait period will be made for:

- (i) Enrollees who left WHP for other health insurance, who are able to provide proof of continuous coverage from the date of disenrollment, and who apply to reenroll in WHP within thirty days of losing the other coverage;
- (ii) Enrollees who left WHP because they lost eligibility and who subsequently become eligible to reenroll;
- (iii) Enrollees who were disenrolled by WHP because no MHCS was contracted to serve the program in which they were enrolled in the geographic area where they live. These enrollees may reenroll, provided all enrollment requirements are met, if an MHCS begins accepting enrollment for their

program in their area or if they become eligible and apply for another HCA program; and

(iv) Enrollees who were disenrolled for failing to provide requested documentation of eligibility for recertification or as otherwise requested by WHP, who provide all required documentation within six months of disenrollment and are eligible to reenroll. Reenrollment in the plan will not be retroactive and shall take place within forty-five days of WHP receiving complete reenrollment documents that verify eligibility.

(b) An enrollee who is required to wait twelve months for reenrollment under (a) of this subsection may not reenroll prior to the end of the required twelve-month wait.

Chapter 182-24 WAC

BASIC HEALTH PLAN

NEW SECTION

WAC 182-24-010 Definitions. The following definitions apply throughout this chapter.

"BHP enrollee," "subsidized enrollee," or "reduced premium enrollee" means an individual who is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

"Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

NEW SECTION

WAC 182-24-020 Eligibility. (1) To be eligible for enrollment in BHP, unless otherwise specified elsewhere in

this chapter, an individual must be a Washington state resident who:

- (a) Is not eligible for free or purchased medicare;
- (b) Is not receiving medical assistance from the department of social and health services (DSHS);
- (c) Is not enrolled in WHP;
- (d) Is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;
- (e) Is not a full-time student who has received a temporary visa to study in the United States;
- (f) Resides in an area of the state served by a managed health care system participating in the plan;
- (g) Chooses to obtain coverage from a particular managed health care system;
- (h) Pays or has paid on their behalf their portion of the costs for participation in the plan; and
- (i) Whose gross family income at the time of enrollment meets the definition of a subsidized enrollee.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later determined to have failed to meet BHP's eligibility criteria at the time of enrollment, will be disenrolled.

(3) Eligibility for BHP Plus and maternity benefits through medical assistance is determined by DSHS, based on medicaid eligibility criteria.

(4)(a) An individual otherwise eligible for enrollment in BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP, or would result in an overexpenditure of BHP funds. An individual otherwise eligible for enrollment in BHP also may be denied enrollment if no managed health care system(s) is accepting new enrollment in that program or from the geographic area where the applicant lives.

(b) If the administrator closes or limits enrollment, to the extent funding is available, BHP will continue to accept and process applications for enrollment from:

- (i) Children eligible for BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus for reasons other than noncompliance;
- (ii) Employees of a home care agency group enrolled or applying for coverage under WAC 182-22-220;
- (iii) Eligible individual home care providers;
- (iv) Licensed foster care workers;
- (v) Persons who disenrolled from BHP in order to enroll in medicaid, and subsequently became ineligible for medicaid;
- (vi) Limited enrollment of new employer groups;
- (vii) Members of the Washington National Guard and Reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents; and
- (viii) Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group

accounts. (For example: Within established guidelines, processing routine income changes that may affect subsidy eligibility for current enrollees; adding new family members to an existing account; transferring enrollees between group and individual accounts; restoring coverage for enrollees who are otherwise eligible for continued enrollment under WAC 182-24-070 (7)(b) after a limited suspension of coverage due to late payment or other health care coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized Native American tribes to that tribe's currently approved financial sponsor group.)

(c) If the administrator has closed or limited enrollment, applicants for BHP who are not in any of the categories in (b) of this subsection may reserve space on a waiting list to be processed according to the date the waiting list request or application is received by BHP. When enrollment is reopened by the administrator, applicants whose names appear on the waiting list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, before determining their eligibility.

NEW SECTION

WAC 182-24-025 How is income calculated? "Gross family income" means total cash receipts, as defined in subsection (1) of this section, before taxes, from all sources, for subscriber and dependents regardless of whether they are enrolled in BHP, with the exceptions noted in subsection (2) of this section. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(1) Income includes:

- (a) Wages, tips, and salaries before any deductions;
- (b) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, except that:

(i) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(ii) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(c) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from self-employment will not be used to offset other income sources;

(d) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, workers' compensation, and strike benefits from union funds;

(e) Payments for punitive damages;

(f) Public assistance, alimony, child support, and military family allotments;

(g) Work study, assistantships, or training stipends;

(h) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(i) Net rental income, net royalties, and net gambling or lottery winnings;

(j) Lump sum inheritances and periodic receipts from estates or trusts; and

(k) Short-term capital gains, such as from the sale of stock or real estate.

(2) Income does not include the following types of money received:

(a) Any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car;

(b) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(c) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as medicare, medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(d) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(e) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(f) College or university scholarships, grants, and fellowships;

(g) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13A.005 through 74.13A.080;

(h) Long-term capital gains;

(i) Crime victims' compensation;

(j) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue

Service requirements) when calculating gross family income. To qualify for this deduction:

(i) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school during the time the child care expenses were paid; and

(ii) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

NEW SECTION

WAC 182-24-030 Failure to report correct income.

(1) If BHP determines that the enrollee has received a subsidy overpayment due to failure to report income correctly, BHP may:

(a) Bill the enrollee for the amount of subsidy overpaid by the state; or

(b) If the overpayment was due to fraud, intentional misrepresentation of information, or withholding information that the enrollee knew or should have known was material or necessary to accurately determine the premium, impose civil penalties of up to two hundred percent of the subsidy overpayment.

(2) Any BHP determination under subsection (1) of this section is subject to the enrollee appeal provisions in chapter 182-22 WAC.

(3) When a decision under subsection (1)(a) of this section is final, BHP may establish a payment schedule and, for enrollees who remain enrolled in BHP, will collect the amount owed through future premium statements. Enrollees who disenroll prior to paying the full amount of the subsidy overpayment may continue the payment plan previously approved by BHP or may be billed for the entire amount due. BHP may charge interest for the amount past due, at the rate specified under RCW 43.17.230 and rules promulgated under that section. The payment schedule will be for a period of no more than six months, unless BHP approves an alternative payment schedule requested by the enrollee. When a payment schedule is established, BHP will send the enrollee advance written notice of the schedule and the total amount due. The total amount due each month will include the regular monthly premium plus charges for subsidy overpayment. If an enrollee does not pay the amount due, including charges for subsidy overpayment, the enrollee and all family members enrolled on the account will be disenrolled for nonpayment under WAC 182-24-070 (2)(b).

(4) When a final decision is made under subsection (1)(b) of this section, BHP will send the enrollee notice that payment of the civil penalty is due in full within thirty days after the decision becomes final, unless BHP approves a different due date at the enrollee's request. If the enrollee does not pay the civil penalty by the due date, the enrollee and all family members on the account will be disenrolled for nonpayment under WAC 182-24-070 (2)(b).

(5) Individuals who are disenrolled from BHP may not reenroll until charges for subsidy overpayments or civil penalties imposed under subsection (1) of this section have been paid or BHP has approved a payment schedule and all other requirements for enrollment have been met.

(6) BHP will take all necessary and appropriate administrative and legal actions to collect the unpaid amount of any subsidy overpayment or civil penalty, including recovery from the enrollee's estate.

(7) Enrollees under employer group or financial sponsor group coverage who do not follow the income reporting procedures established by BHP and their employer or financial sponsor may be billed directly by BHP for subsidy overpayments or civil penalties assessed under subsection (1) of this section. Enrollees who do not pay the amount due will be disenrolled under WAC 182-24-070 (2)(b) or (c). Enrollees who are disenrolled for nonpayment of a subsidy overpayment or civil penalties will be excluded from the minimum participation calculation for employer groups under WAC 182-22-210(2).

NEW SECTION

WAC 182-24-040 BHP benefits. (1) The administrator shall design and from time to time may revise BHP benefits, according to the requirements of chapter 70.47 RCW, as amended. These benefits will include physician services, prescription drugs and medications, and inpatient and outpatient hospital services, mental health care services, limited chemical dependency services, limited organ transplant services, and all services necessary for prenatal, postnatal and well-child care, and will emphasize proven preventive and primary care services. The medicaid scope of benefits may be provided by BHP as the BHP Plus program through coordination with DSHS for children under the age of nineteen, who are found to be medicaid eligible. BHP benefits may include copayments, waiting periods, and limitations and exclusions which the administrator determines are appropriate and consistent with the goals and objectives of the plan. BHP benefits will be subject to a nine-month waiting period for preexisting conditions. Exceptions (for example, maternity, prescription drugs, services for a newborn or newly adopted child, dependent children up to age nineteen) are outlined in the schedule of benefits. Credit toward the waiting period will be given for any continuous period of time for which an enrollee was covered under similar health coverage if that coverage was in effect at any time during the three-month period immediately preceding the date of reservation or application for coverage under BHP. Similar coverage includes BHP, WHP, all DSHS programs administered by the medical assistance administration which have the medicaid scope of benefits, the DSHS program for the medically indigent, Indian health services, most coverages offered by health carriers, and most self-insured health plans. A list of BHP benefits, including copayments, waiting periods, and limitations and exclusions will be provided to the subscriber.

(2) In designing and revising BHP benefits, the administrator will consider the effects of particular benefits, copayments, limitations and exclusions on access to necessary health care services, as well as the cost to the enrollees and to the state, and will also consider generally accepted practices of the health insurance and managed health care industries.

(3) Prior to enrolling in BHP, each applicant will be given a written description of covered benefits, including all copayments, waiting periods, limitations and exclusions, and

be advised how to access information on the services, providers, facilities, hours of operation, and other information descriptive of the managed health care system(s) available to enrollees in a given service area.

(4) BHP will provide to all subscribers written notice of any changes in the scope of benefits provided under BHP, or program changes that will affect premiums and copayments at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. This subsection does not apply to premium changes that are the result of changes in income or family size. The administrator may make available a separate schedule of benefits for children, eighteen years of age and younger, for those dependent children in the plan.

NEW SECTION

WAC 182-24-050 Premiums and copayments. (1) Subscribers or their employer or financial sponsor are responsible for paying the full monthly premium to BHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule. A third party may, with the approval of the administrator, become a financial sponsor and pay all or a designated portion of the premium on behalf of a subscriber and dependents, if any.

(2) The amount of premium due from or on behalf of a subsidized enrollee will be based upon the subscriber's gross family income, the managed health care system selected by the subscriber, rates payable to managed health care systems, and the number and ages of individuals in the subscriber's family.

(3) Once BHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by BHP unless the premium has been paid by the due date given. Thereafter, BHP will bill each subscriber or employer or financial sponsor monthly.

(4) Full payment for premiums due must be received by BHP by the date specified on the premium statement. If BHP does not receive full payment of a premium by the date specified on the premium statement, BHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with BHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the subscriber and enrolled family members will be disenrolled for nonpayment under the provisions of WAC 182-24-060(2). Partial payment of premiums due, payment which for any reason cannot be applied to the correct BHP enrollee's account, or payment by check which is

not signed, cannot be processed, or is returned due to nonsufficient funds, will be regarded as nonpayment.

(5) Enrollees shall be responsible for paying any required copayment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS.

(6) Monthly premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level will be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Monthly premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level will not exceed one hundred dollars per month.

NEW SECTION

WAC 182-24-060 Enrollment in the plan. (1) Any individual applying for enrollment must submit a signed, completed application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for medicaid eligibility determination.

(2) Each BHP or BHP Plus applicant must list all eligible dependents, regardless of whether the dependents will be enrolled, and must supply other information and documentation as required and where applicable by BHP and DSHS medical assistance.

(a) Applicants for BHP enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-22-210(5), BHP may use an average of documented income when determining eligibility.

(b) Applicants for BHP enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate an MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of an MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally, enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When an MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(5) Except as otherwise provided in this chapter, applications for enrollment will be reviewed by BHP within thirty business days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(6)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-24-020.

(7) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(8) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family

member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(9) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(10) BHP will verify the continuing eligibility of BHP enrollees through the recertification process at least once every twelve months. The recertification period begins upon completion of the previous recertification process. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify enrollees' income through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to submit new income documentation if their wage or salary income cannot be compared to an independent source for verification. The six-month period begins upon completion of the previous recertification process.

(d) Enrollees who have documented that they are not required to file a federal income tax return for previous years will not be required to provide additional verification of non-filing unless their circumstances appear to have changed or other information received indicates they have filed a federal income tax return.

(11) In addition to verification of income, BHP enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-five attending school out-of-state; and

(c) Medicare ineligibility for enrollees age sixty-five or over and for enrollees who have been receiving Social Security disability benefits for twenty-four consecutive months or more.

(12) When determining eligibility for BHP enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(13) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (10) and (11) of this section more frequently, regardless of the length of time since their last recertification.

(14) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-24-070 (2)(d).

(15) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-24-030.

NEW SECTION

WAC 182-24-070 Disenrollment from BHP. (1) An enrollee or employer group may disenroll effective the first day of any month by giving BHP at least ten days prior notice of the intention to disenroll.

(2) BHP may disenroll any enrollee or group from BHP for good cause, which includes:

(a) Failure to meet the BHP eligibility requirements;

(b) Nonpayment of premium under the provisions of subsection (7) of this section;

(c) Changes in MHCS or program availability when the enrollee's MHCS will no longer be available to him or her and no other MHCS in the area where the enrollee lives is accepting new enrollment in the enrollee's program;

(d) Fraud, intentional misrepresentation of information, or withholding information that the enrollee knew or should have known was material or necessary to accurately determine their eligibility or premium responsibility, failure to provide requested verification of eligibility or income, or knowingly providing false information;

(e) Abuse or intentional misconduct;

(f) Danger or threat to the safety or property of the MHCS or the health care authority or their staff, providers, patients or visitors; and

(g) Refusal to accept or follow procedures or treatment determined by an MHCS to be essential to the health of the enrollee, when the MHCS has advised the enrollee and demonstrated to the satisfaction of BHP that no professionally acceptable alternative form of treatment is available from the MHCS.

(3) In addition to being disenrolled, any enrollee who knowingly provides false information to BHP or to a participating managed health care system may be held financially responsible for any covered services fraudulently obtained through BHP.

(4) At least ten days before the effective date of disenrollment under subsection (2)(a) and (c) through (g) of this

section, BHP will send the enrollee written notice of disenrollment.

(a) The notice of disenrollment will:

- (i) State the reason for the disenrollment;
- (ii) State the effective date of the disenrollment;
- (iii) Describe the procedures for disenrollment; and
- (iv) Inform the enrollee of his or her right to appeal the disenrollment decision as set forth in chapter 182-22 WAC.

(b) The notice of disenrollment will be sent to both the employer or sponsor and to all members of an employer group, home care agency group or financial sponsor group that is disenrolled under these provisions. Enrollees affected by the disenrollment of a group account will be offered coverage under individual accounts. Coverage under individual accounts will not begin unless the premium for individual coverage is paid by the due date for the coverage month. A one-month break in coverage may occur for enrollees who choose to transfer to individual accounts.

(5) Enrollees covered under BHP Plus or receiving maternity benefits through medical assistance will not be disenrolled from those programs when other family members lose BHP coverage, as long as they remain eligible for those programs.

(6) Enrollees who are notified that they will be disenrolled due to incomplete recertification documents shall not be disenrolled if they submit complete documents within thirty days after the disenrollment letter is mailed.

(7) Under the provisions of this subsection, BHP will suspend or disenroll enrollees and groups who do not pay their premiums when due, including amounts owed for subsidy overpayment, if any. Partial payment or payment by check which cannot be processed or is returned due to non-sufficient funds will be regarded as nonpayment.

(a) At least ten days before coverage will lapse, BHP will send a delinquency notice to each subscriber whose premium payment has not been received by the due date. The delinquency notice will include a final due date and a notice that BHP coverage will lapse unless payment is received by the final due date.

(b) Except as provided in (c) of this subsection, coverage will be suspended for one month if an enrollee's premium payment is not received by the final due date, as shown on the delinquency notice. BHP will send written notice of suspension to the subscriber, which will include:

- (i) The effective date of the suspension;
- (ii) The due date by which payment must be received to restore coverage after the one-month suspension;
- (iii) Notification that the subscriber and any enrolled dependents will be disenrolled if payment is not received by the final due date; and
- (iv) Instructions for filing an appeal under WAC 182-22-310.

(c) Enrollees whose premium payment has not been received by the delinquency due date, and who have been suspended twice within the previous twelve months will be disenrolled for nonpayment as of the effective date of the third suspension.

(d) Enrollees who are suspended and do not pay the premium for the next coverage month by the due date on the

notice of suspension will be immediately disenrolled and issued a notice of disenrollment, which will include:

- (i) The effective date of the disenrollment; and
- (ii) Instructions for filing an appeal under WAC 182-22-310.

(8)(a) Unless otherwise specified in this chapter, and subject to the provisions of WAC 182-22-430, enrollees who voluntarily disenroll or are disenrolled from BHP may not reenroll for a period of twelve months from the date their coverage ended and until all other requirements for enrollment have been satisfied. An exception to this provision may be made for:

(i) Enrollees who left BHP for other health insurance, who are able to provide proof of continuous coverage from the date of disenrollment, and who apply to reenroll in BHP within thirty days of losing the other coverage;

(ii) Enrollees who left BHP because they lost eligibility and who subsequently become eligible to reenroll;

(iii) Persons enrolling in BHP, who had enrolled and subsequently disenrolled from WHP under subsection (1) or (2)(b) of this section while on a waiting list for BHP, if otherwise eligible;

(iv) Enrollees who were disenrolled by BHP because no MHCS was contracted to serve the program in which they were enrolled in the geographic area where they live; these enrollees may reenroll, provided all enrollment requirements are met, if an MHCS begins accepting enrollment for their program in their area or if they become eligible and apply for another HCA program; and

(v) Enrollees who were disenrolled for failing to provide requested documentation of income or eligibility for recertification or as otherwise requested by BHP, who provide all required documentation within six months of disenrollment and are eligible to reenroll. Reenrollment in the plan will not be retroactive and shall take place within forty-five days of BHP receiving complete reenrollment documents that verify eligibility; subject to the provisions of WAC 182-24-050.

(b) An enrollee who is required to wait twelve months for reenrollment under (a) of this subsection may not reenroll before the end of the required twelve-month wait. If an enrollee satisfies the required twelve-month wait after applying for BHP and while waiting to be offered coverage, enrollment will not be completed until funding is available to enroll him or her.

AMENDATORY SECTION (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

WAC 182-25-120 Basic health plan coverage for health coverage tax credit eligible enrollees. (1) "Health coverage tax credit eligible enrollee" or "HCTC enrollee" means an individual or qualified dependent determined by the federal Department of the Treasury to be eligible for a tax credit, as defined under RCW 70.47.020 (3) and (4). In the event that the federal health coverage tax credit program is no longer available, HCTC enrollment in BHP will end.

(2) Eligibility for HCTC enrollment, as subscriber or dependent, is determined by the federal Health Coverage Tax Credit program. HCTC enrollees must provide proof of eligibility for HCTC enrollment, but are not required to also meet

the eligibility criteria in WAC (~~(182-25-030)~~) 182-23-020 or 182-24-020.

(3) Unless the enrollee has applied for, is eligible, and has enrolled as a (~~subsidized~~) BHP enrollee, the monthly premium due from or on behalf of an HCTC enrollee will be the full cost charged by the MHCS for coverage, plus the administrative cost of providing BHP coverage and the premium tax under RCW 48.14.0201.

(4) HCTC enrollees may pay the full premium for coverage to BHP or, if they are claiming the HCTC advance tax credit, may pay their portion of the premium to the federal HCTC program of the Internal Revenue Service (IRS) by the date required by the IRS.

(5) With the exception of subsections (3) and (7) of this section, (~~subsidized~~) BHP enrollees who are HCTC eligible will be subject to the rules for (~~subsidized~~) BHP enrollees.

(6) Notice of disenrollment will be sent to the HCTC enrollees for whom the premium has not been paid. This notice will be sent (~~prior to~~) before the month of coverage, but will not be subject to the notification requirements in WAC (~~(182-25-090(6))~~) 182-24-070(7). If payment is received no later than the first day of the month of coverage, the enrollee's coverage for that month will be reinstated.

(7) The nine-month waiting period for treatment of pre-existing conditions will be waived for HCTC enrollees who have had three months or more of creditable coverage, as defined under Public Law 104-191, without a break in coverage of more than sixty-two consecutive days at the time of application. Subsidized enrollees who are HCTC eligible, who provide proof of that eligibility to their MHCS, will be treated as HCTC enrollees for purposes of determining whether the preexisting condition waiting period can be waived.

(8) HCTC enrollees who disenroll may return to HCTC enrollment without being subject to the provisions of WAC (~~(182-25-090(7))~~) 182-24-070(8).

(9) Because eligibility for the HCTC program is determined by the federal HCTC program at the Internal Revenue Service, BHP will not review appeals of eligibility for the HCTC program. Instructions on appealing an HCTC eligibility determination are available through the HCTC customer contact center.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-25-001 Authority.
- WAC 182-25-010 Definitions.
- WAC 182-25-020 BHP benefits.
- WAC 182-25-030 Eligibility.
- WAC 182-25-040 Enrollment in the plan.
- WAC 182-25-050 Employer groups.
- WAC 182-25-060 Home care agencies.
- WAC 182-25-070 Financial sponsors.

- WAC 182-25-080 Premiums and copayments.
- WAC 182-25-085 Enrollees' failure to report correct income.
- WAC 182-25-090 Disenrollment from BHP.
- WAC 182-25-100 Where to find instructions for filing an appeal.
- WAC 182-25-105 How to appeal health care authority (HCA) decisions.
- WAC 182-25-110 How to appeal a managed health care system (MHCS) decision.

WSR 10-24-064
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 30, 2010, 9:26 a.m., effective December 31, 2010]

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

Purpose: The department is amending WAC 388-436-0005 to reduce the maximum diversion cash assistance benefits from \$1500 to \$1250 in a twelve-month period. The proposed amendments are necessary for the program to contain costs and ensure the program's fiscal stability.

Citation of Existing Rules Affected by this Order: Amending WAC 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Adopted under notice filed as WSR 10-20-162 on October 6, 2010.

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

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

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

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

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

Date Adopted: November 24, 2010.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-066, filed 1/12/01, effective 3/1/01)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? DSHS has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA) except:

(i) You do not have to participate in WorkFirst requirements as defined in chapter 388-310 WAC; and

(ii) You do not have to assign child support rights or cooperate with division of child support as defined in chapter 388-422 WAC.

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need exists; and

(d) Have or expect to get enough income or resources to support yourselves for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps; or

(f) Medical costs, except when an adult member of your family is not eligible because of failure to provide third party liability (TPL) information as defined in WAC 388-505-0540.

(3) DCA payments are limited to:

(a) One thousand (~~five hundred~~) **two hundred fifty** dollars once in a twelve-month period which starts with the month the DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DCA payments can be paid:

(a) All at once; or

(b) As separate payments over a thirty-day period. The thirty-day period starts with the date of your first DCA payment.

(6) When it is possible, we pay your DCA benefit directly to the service provider.

(7) You are not eligible for DCA if:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit is receiving SSI; or

(d) Your assistance unit does not have a needy adult (such as when you do not receive TANF/SFA payment for yourself but receive it for the children only).

(8) If you apply for DCA after your TANF/SFA grant has been terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago:

(a) We set up a DCA loan.

(i) The amount of the loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period.

(ii) The first month begins with the month DCA benefits began.

(b) We collect the loan only by reducing your grant. We take five percent of your TANF/SFA grant each month.

(10) If you stop getting TANF/SFA before you have repaid the loan, we stop collecting the loan unless you get back on TANF/SFA.

WSR 10-24-065

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 30, 2010, 9:39 a.m., effective December 31, 2010]

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

Purpose: WAC chapter was developed in the early 1970s to provide a description and organization overview of the state fire marshal's office. Since its adoption, the state fire marshal's office has changed agencies three times and the WAC no longer is based on current statutory authority. The proposal is to repeal this WAC chapter.

Citation of Existing Rules Affected by this Order: Repealing chapter 212-02 WAC.

Statutory Authority for Adoption: Not applicable.

Adopted under notice filed as WSR 10-19-093 on September 20, 2010.

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 5.

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

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

Date Adopted: October 28, 2010.

John R. Batiste
Chief

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 212-02-010	General authority, duties and goals of the fire marshal.
WAC 212-02-020	Organization and operations.
WAC 212-02-030	Functions.
WAC 212-02-040	Publications and information available.
WAC 212-02-050	Hearings of the state fire marshal.

WSR 10-24-066**PERMANENT RULES****WASHINGTON STATE PATROL**

[Filed November 30, 2010, 9:40 a.m., effective December 31, 2010]

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

Purpose: Updating current language to coincide with amendments made to RCW 46.61.506. The language changes will include the approval of new evidentiary breath test instrument (Alcotest 9510) and amendments to the current "definitions," "test defined," and "solution changers" sections under chapter 448-16 WAC to allow for the use of either certified dry gas or simulator solutions.

The proposed changes will also remove the redundant language within the chapter and provide clean up to some of the existing language. WAC 448-16-140 requires that all documents and records produced by the state toxicologist and personnel involved in breath testing for the state of Washington are available on request. In addition, the agency must maintain all records to meet accreditation requirements. Therefore, there does not seem to be a need to outline under each section that documentation will be on file and available upon request as the requirement is outlined under WAC 446-16-140 for all documentation.

Citation of Existing Rules Affected by this Order: Amending chapter 448-16 WAC.

Statutory Authority for Adoption: RCW 46.61.506.

Adopted under notice filed as WSR 10-19-070 on September 16, 2010.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

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

Date Adopted: October 28, 2010.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-020 Approval of breath test equipment.

(1) Pursuant to RCW 46.61.506, the following instruments are approved for the quantitative measurement of alcohol in a person's breath:

- (a) The DataMaster((-));
- (b) The DataMaster CDM; and
- (c) The Drager Alcotest 9510.

(2) Pursuant to RCW 46.61.506, the following thermometers are approved:

(a) Mercury in glass thermometers with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade.

(b) Digital thermometer system contained within the Guth 2100 wet bath simulator.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-030 Definitions. (1) "Accuracy" means the proximity of a measured value to a reference value.

(2) "Alcohol" means the unique chemical compound ethyl alcohol.

(3) "Blank test" means the testing of an instrument to ensure that no alcohol from a previous test can interfere with a person's breath test.

(4) "Concentration" means the weight amount of alcohol, expressed in grams, contained in two hundred ten liters of breath or alcohol/water vapor.

(5) "Data entry" means the process of providing information (~~((through a keyboard))~~) to the instrument for the purposes of ~~((a))~~ identifying a breath test document to an individual ~~((and (b) statistical analysis))~~.

(6) "Interference" means a test result whose infrared absorbance or electrochemical analysis properties are not consistent with ~~((ethanol))~~ ethyl alcohol.

(7) "End expiratory air" means the last portion of breath to be delivered to the instrument once the appropriate sample acceptance criteria have been met.

(8) "External standard test" means the ~~((use of))~~ process by which the accuracy of the instrument is verified, using a simulator containing a certified simulator solution ~~((, to provide a known alcohol vapor concentration to test the accuracy and proper working order of the instrument. This test of the function of the instrument is performed with every breath test. The external standard test does not calibrate the instru-~~

ment)) or a compressed gas standard containing a known alcohol concentration.

(9) "Internal standard test" means the ~~((use of a quartz filter to provide a check that the instrument has maintained calibration since the last time calibration was performed and is in proper working order at the time of the test))~~ process by which the instrument calibration is verified.

(10) "Precision" means the ability of a technique to perform a measurement in a reproducible manner.

(11) "Simulator" means a device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of known alcohol concentration.

(12) "Valid breath sample" means a sample of a person's breath provided in such a manner to be accepted for analysis by the instrument.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-040 Foreign substances, interference, and invalid samples. (1) A determination as to whether a subject has a foreign substance in his or her mouth ~~((shall))~~ will be made by either an examination of the mouth or a denial by the person that he or she has any foreign substances in their mouth. A test mouthpiece is not considered a foreign substance for purposes of RCW 46.61.506.

(2) If a subject is wearing jewelry or ornamentation pierced through their tongue, lips, cheek, or other soft tissues in the oral cavity, they will be required to remove this prior to conducting the breath test. If the subject declines to remove the jewelry or ornamentation, they will be deemed to have a physical limitation rendering them incapable of providing a valid breath sample and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308.

(3) If during a breath test, interference is detected, this will invalidate the test. The subject will be required to repeat the test. A subject whose breath registers the presence of interference on two or more successive breaths shall be deemed to have a physical limitation rendering them incapable of providing a valid breath sample and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308.

(4) In the event that the instrument records an "invalid sample" result at any point during the subject's test, that subject's test should be readministered, after again determining that the subject has no foreign substance in their mouth as outlined in WAC 448-16-040(1), and repeating the fifteen minute observation period.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-050 Test defined. A test of a person's breath for alcohol concentration ~~((shall))~~ will consist of the person ~~((insufflating))~~ exhaling end-expiratory air samples at least twice into the instrument, sufficient to allow two separate measurements. There will be sufficient time between the provision of each sample to permit the instrument to measure each sample individually. Two valid breath samples, provided consecutively, will constitute one test.

The instrument will perform this test according to the following protocol when being employed to quantitatively measure an individual's breath alcohol concentration. Successful compliance with each step of this protocol is determined from an inspection of the printout of results. These steps are necessary to ensure accuracy, precision, and confidence in each test.

Step 1. Data entry.

Step 2. Blank test with a result of .000.

Step 3. Internal standard verified.

Step 4. First breath sample provided by subject.

Step 5. Blank test with a result of .000.

Step 6. External standard ~~((simulator solution))~~ test. The result of this test must be between .072 and .088, inclusive.

Step 7. Blank test with a result of .000.

Step 8. Second breath sample provided by subject.

Step 9. Blank test with a result of .000.

Step 10. Printout of results.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-060 Determining agreement of duplicate breath samples. Pursuant to RCW 46.61.506 the following method is approved for determining whether two breath samples agree to within plus or minus ten percent of their mean.

(1) The breath test results ~~((shall))~~ will be reported, truncated to three decimal places.

(2) For the DataMaster instruments, the mean of the two breath test results ((shall)) will be calculated and rounded to four decimal places. For the Drager instrument, the mean of all four results will be calculated and rounded to four decimal places.

(3) The lower acceptable limit ~~((shall))~~ will be determined by multiplying the above mean by 0.9, and truncating to three decimal places.

(4) The upper acceptable limit ~~((shall))~~ will be determined by multiplying the mean by 1.1 and truncating to three decimal places.

(5) If the individual results fall within and inclusive of the upper and lower acceptable limits, the two breath samples are valid.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-070 Review, approval, and authorization of protocols of procedures and methods by the state toxicologist. The state toxicologist ~~((shall))~~ will review, approve, and authorize such protocols of procedures and methods (of the toxicologist's own promulgation or submitted by outside agencies or individuals for consideration) required in the administration of the breath test program. ~~((Such review, approval, and authorization will be so signified by a signed statement attached to each protocol, and kept on file by the Washington State Patrol.))~~ These protocols will be updated as necessary to maintain the quality of the breath test program.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-080 Instructors. The state toxicologist ~~((shall))~~ will certify persons found to be competent and qualified, as "instructors." Instructors are authorized to administer breath tests for alcohol concentration using approved instruments and are further authorized to train and certify as operators, according to outlines approved by the state toxicologist, those persons the instructor finds qualified to administer the breath test utilizing approved instruments. Instructors who are also certified as PBT technicians may instruct other individuals as PBT technicians according to the approved outlines. ~~((Details of persons certified as instructors shall be maintained by the state toxicologist and available upon request.))~~

If an instructor fails or refuses to demonstrate to the state toxicologist ~~((or to his representative))~~, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-090 Operators. The state toxicologist, or certified instructors ~~((shall))~~ will certify as "operators" persons found by them to be competent and qualified to administer breath tests for alcohol concentration using approved breath testing instruments. ~~((Persons who have attended courses in the operation of approved breath testing instruments taught by an instructor qualified by the state toxicologist, upon certification of attendance and qualification, shall be designated as "operators." Details of persons so certified shall be maintained by the state toxicologist and available upon request.))~~

If an operator fails or refuses to demonstrate to the state toxicologist or to a certified instructor, that he or she has the ability to adequately perform his or her responsibilities as an operator, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-100 ~~((Solution))~~ External standard changers. The state toxicologist, or certified instructors, ~~((shall))~~ will certify as "~~((solution))~~ external standard changers" operators found by them to be competent and qualified. In addition to being qualified as "operators" these persons must receive approved instruction covering the changing of simulator external standard solutions and compressed gas cylinders for approved breath test instruments, taught by ~~((an))~~ a certified instructor ~~((qualified by the state toxicologist. Details of persons so certified shall be maintained by the state toxicologist and available upon request.))~~.

If ~~((a solution))~~ an external standard changer fails or refuses to demonstrate to the state toxicologist or to a certified instructor, that he or she has the ability to adequately perform his or her responsibilities as ~~((a solution))~~ an external standard changer, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-110 Technicians. The state toxicologist ~~((shall))~~ will certify as "technicians" such persons found to be competent and qualified to maintain the proper working order of breath test instruments through adjustment, repair, and regular service. ~~((Details of persons so certified shall be maintained by the state toxicologist and available upon request.))~~

Technicians are authorized to perform maintenance, calibration and instruction in the use of the portable breath test devices. Technicians are also authorized to instruct persons otherwise qualified as "technicians," "instructors," "operators," and "~~((solution))~~ external standard changers" according to training outlines approved by the state toxicologist. Certified technicians are themselves authorized to perform the duties of "instructors," "operators," and "~~((solution))~~ external standard changers."

If a technician fails or refuses to demonstrate to the state toxicologist ~~((or his representative))~~, that he or she has the ability to adequately perform his or her responsibilities as a technician, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-120 Permit cards. Pursuant to RCW 46.61.506, the state toxicologist ~~((shall))~~ will authorize the issuance to persons deemed qualified as "instructors," "operators," "solution changers" or "technicians," a wallet-sized card bearing his or her name and designation. Permit cards ~~((shall))~~ will bear the signature or facsimile signature of the state toxicologist. Such permit cards ~~((shall))~~ will expire three years after the date on the card, unless renewed for a like three-year period. Operators whose authorization expires may take recertification training within ninety days following expiration of their prior certification, but are not certified to perform any evidential breath tests during that period. Once ninety days have elapsed after the expiration of authorization, the operator must repeat the basic certification training.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-130 Review, approval, and authorization by the state toxicologist of training courses and outlines. The state toxicologist ~~((shall))~~ will approve and authorize such courses and course outlines (of ~~((his))~~ the toxicologist's own promulgation or submitted for consideration by outside agencies or individuals) required in the training of breath test program personnel. ~~((Such review, approval, and authorization will be so signified by a signed statement attached to each course outline. These course outlines may be reviewed and updated as necessary to maintain the quality of the breath test program.))~~ Instructors are directed to use only approved outlines in conducting the training of operators. ~~((Information concerning currently approved course outlines~~

can be obtained on application to the office of the state toxicologist.)

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-140 Information concerning technical aspects of the breath test program. All documents ((used) and records produced by the state toxicologist and personnel involved in breath testing for the state of Washington((, which)) are available on request ((include: The simulator solution preparation protocol, alcohol analysis protocol, certification document for simulator solution, affidavit from analyst of simulator solution, data base, quality assurance protocol, quality assurance procedure report, operator course outline, operator refresher course outline, and operator training record. A fee may be charged to cover the cost of providing these copies.)) Copies of most of these records are available at no charge on a web site maintained by the Washington state patrol at <http://breathtest.wsp.wa.gov/welcome.htm>.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-150 Address for correspondence. Information regarding instrument records, or the certification of operators, instructors, solution changers, and technicians should be obtained from the Washington State Patrol, Breath Test ((Section)) Program, 811 E. Roanoke, Seattle, WA 98102.

Persons seeking information regarding other aspects of the breath alcohol testing program ((shall)) will direct their request initially to the State Toxicologist, Washington State Toxicology Laboratory, Forensic Laboratory Services Bureau, Washington State Patrol, 2203 Airport Way S., Seattle, WA 98134.

AMENDATORY SECTION (Amending WSR 04-19-144, filed 9/22/04, effective 10/23/04)

WAC 448-16-160 Severability. If any part or provision of these rules or regulations or the application thereof is held invalid, such invalidity ((shall)) will not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end any section, paragraph or sentence, is declared to be severable.

WSR 10-24-067

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 30, 2010, 9:41 a.m., effective December 31, 2010]

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

Purpose: Language changes to reflect current laboratory procedures for analyzing and reporting blood alcohol concentrations, and provide clean-up language.

Citation of Existing Rules Affected by this Order: Amending chapter 448-14 WAC.

Statutory Authority for Adoption: RCW 46.61.506.

Adopted under notice filed as WSR 10-19-094 on September 20, 2010.

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

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

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

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

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

Date Adopted: October 28, 2010.

John R. Batiste
Chief

AMENDATORY SECTION (Amending Order 4, filed 7/9/70)

WAC 448-14-010 Criteria for approved methods of quantitative analysis of blood samples for alcohol. Any quantitative blood alcohol analysis method which meets the following criteria is approved by the state toxicologist and may be used in the state of Washington. Analysis of urine for estimation of blood alcohol concentrations is not approved by the state toxicologist in the state of Washington.

The blood analysis procedure should have the following capabilities:

(1) Precision and accuracy.

(a) The method ((shall)) will be capable of replicate analyses by an analyst under identical test conditions so that consecutive test results on the same date agree with a difference which is not more than 3% of the mean value of the tests. This criterion is to be applied to blood alcohol levels of 0.08((%)) grams of alcohol per 100 mL and higher.

(b) Except for gas chromatography, the method should be calibrated with water solutions of ethyl alcohol, the strength of which should be determined by an oxidimetric method which employs a primary standard, such as United States National Bureau of Standards potassium dichromate.

(c) The method ((shall)) will give a test result which is always less than 0.005((%)) grams of alcohol per 100 mL when alcohol-free living subjects are tested.

(2) Specificity.

(a) On living subjects, the method should be free from interferences native to the sample, such as therapeutics and preservatives; or the oxidizable material which is being measured by the reaction should be identified by qualitative test.

(b) Blood alcohol results on post-mortem samples should not be reported unless the oxidizable substance is identified as ethanol by qualitative test.

AMENDATORY SECTION (Amending Order 4, filed 7/9/70)

WAC 448-14-020 Operational discipline of blood samples for alcohol. (1) Analytical procedure.

(a) The analytical procedure should include:

(i) A control test

(ii) A blank test

(iii) Duplicate analyses that ~~((should))~~ agree to within ~~((0.01% blood alcohol deviation from the))~~ plus or minus ten percent of their mean.

(b) All sample remaining after analysis should be retained for at least three months under suitable storage conditions for further analysis if required.

(c) Each analyst ~~((shall))~~ will engage in a proficiency test program in which some blood samples containing alcohol are exchanged with other laboratories and tested ~~((on a blind basis))~~ so that the proficiency of each analyst and the precision and accuracy of the test method can be evaluated no less than one time per year.

(2) Reporting procedure.

(a) The results should be expressed as grams of alcohol per 100 ~~((ml))~~ mL of whole blood sample.

(b) The analysis results should be reported to two significant figures ~~((, using the mathematical rule of rounding)).~~

(c) Blood alcohol results on living subjects ~~((0.0009%))~~ of 0.009 grams of alcohol per 100 mL or lower ~~((shall))~~ will be reported as negative. Blood alcohol results on post-mortem samples of 0.019 ~~((%)~~) grams of alcohol per 100 mL or less ~~((shall))~~ will be reported as negative. (See WAC 448-14-010 (2)(b))

(3) Sample container and preservative.

(a) A chemically clean dry container consistent with the size of the sample with an inert leak-proof stopper ~~((shall))~~ will be used.

(b) Blood samples for alcohol analysis ~~((shall))~~ must be preserved with an anticoagulant and an enzyme poison sufficient in amount to prevent clotting and stabilize the alcohol concentration. Suitable preservatives and anticoagulants include the combination of sodium fluoride and potassium oxalate.

AMENDATORY SECTION (Amending Order 4, filed 7/9/70)

WAC 448-14-030 Qualifications for a blood alcohol analyst. (1) Minimum qualifications for the issuance by the state toxicologist of a blood alcohol analyst permit ~~((shall))~~ will include college level training in fundamental analytical chemistry with a minimum of five quarter hours of quantitative chemistry laboratory or equivalent, with a passing grade.

(2) The state toxicologist ~~((shall))~~ will issue a blood alcohol analyst permit to each person ~~((he finds))~~ found to be properly qualified, and ~~((he shall))~~ will hold written, oral or practical examinations to aid ~~((him))~~ the state toxicologist in judging qualifications of applicants. Such permits ~~((shall))~~ will bear the signature or facsimile signature of the state toxicologist and be dated.

(3) The blood alcohol analyst permits are subject to cancellation by the state toxicologist if the permittee refuses or

fails to obtain satisfactory results on samples periodically distributed to the permittees by the state toxicologist.

WSR 10-24-068

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 30, 2010, 9:42 a.m., effective December 31, 2010]

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

Purpose: There is a need for updates to some of the tow standards to update language regarding the requirements for the application for letter of appointment and minimum tow truck equipment standards and provide clarifying language.

Citation of Existing Rules Affected by this Order: Amending WAC 204-91A-060 and 204-91A-170.

Statutory Authority for Adoption: RCW 46.37.005, 46.55.050, and 46.55.115.

Adopted under notice filed as WSR 10-19-095 on September 20, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 204-91A-060(5) was amended changing "will" to "may" for refusal of an applicant for a misdemeanor.

Other minor edits were made to WAC 204-91A-060 as well.

WAC 204-91A-170 (6)(j) and (10)(i) were amended to allow for a grade 7 chain.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: October 28, 2010.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-060 Application and qualifications for letter of appointment. (1) An application must be approved and a letter of appointment issued by the patrol before an operator is authorized to provide towing services for the patrol pursuant to this chapter. However, nothing herein prohibits the patrol from calling ~~((the))~~ a towing business upon the specific request of a person responsible for a vehicle or his/her agent.

~~((1) Who must complete the application?))~~ (2) An application for letter of appointment must be completed by:

Type of business	Who must complete the application
Tow company	((Operator/owner)) <u>Owner/operator</u>
Partnership	Each partner
Corporation	The patrol may require each of the present and subsequent officers, managers, and stakeholders holding 10% or more of the total issued stock to <u>complete an application.</u>

~~((2))~~ **What is required on the application?**

~~(a) In order)~~ (3) To be issued a letter of appointment, the applicant(s) must:

~~((i) Fill out)~~ (a) Complete the application form provided by the patrol(~~(~~

~~(ii))~~; and

(b) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls; and

(c) Satisfy the requirements contained in WAC 204-91A-070; and

(d) Demonstrate through a letter included with the application that they have at least two years of experience within the towing industry, ~~((including which of the following requirement(s) apply))~~ or be granted a waiver if the owner/operator does not have the required two years experience.

(i) The two years of experience must have been acquired within five years of the date of application. The two years of experience may be satisfied by demonstrating any of the following:

(A) He or she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional, and has a working knowledge of the paperwork requirements for impounds; or

(B) He or she has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or

(C) He or she will keep in place the existing management team/employees for a minimum of one year upon purchasing the business.

~~((iii) Be granted a waiver.)~~ (ii) If the owner/operator does not have the required two years experience, the owner/operator may be granted a waiver of this requirement. If the owner/operator is granted a waiver, ~~((they will remain on probation))~~ the letter of appointment may be granted on a probationary basis for a period of one year from the date of the waiver.

~~((iv) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls.~~

(v) An exception may be made if an operator desires a letter of appointment for class "C" tows only. In such situations, only a class "C" truck is required.

(vi) Upon request, the patrol will advise the applicant of the contents of the department's regulations and of the standards established for the issuance of a letter of appointment.

~~(b))~~ (4) Upon receipt by the patrol of a completed application:

(a) The district office must:

(i) Complete the tow zone portion of the application form. The district commander or designee will enter "approved" or "disapproved" next to the zone designation and sign the form; and

(ii) Forward the application and letter of contractual agreement to the section.

~~((e))~~ (b) The ~~((patrol))~~ section will assign the application a docket number which will be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the patrol thereafter.

~~((3))~~ **When will an application be denied?**

~~(a))~~ (5) The patrol ~~((may))~~ will refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

~~((i))~~ (a) Has been convicted of any of the following:

(i) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction; or

(ii) ~~((Has been convicted of))~~ Any class B felony within the last ten years; or

(iii) ~~((Has been convicted of))~~ Any class C felony within the last five years; or

(iv) ~~((Has been convicted of))~~ A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years; or

(v) ~~((Has been convicted of))~~ Any gross misdemeanor within the last three years; or

(vi) ~~((Has been convicted of any misdemeanor within the last year; or~~

~~(vii))~~ (b) Must register as a sex offender(~~(~~

~~(b) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.~~

~~(c) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.~~

~~(4) If an application is denied, when can a new application be submitted?)~~ or kidnapping offender; or

(c) Has been granted a deferred prosecution under chapter 10.05 RCW for any gross misdemeanor within the last three years.

(6) The patrol may refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(a) Has been convicted of any misdemeanor within the last year; or

(b) Has been granted a deferred prosecution under chapter 10.05 RCW for any misdemeanor within the last year.

(7) The patrol may refuse to issue or may revoke a letter of appointment or contract if any applicant, partner or corporate officer involved in daily operations, or any employee who operates a tow truck or assists in vehicle auctions:

(a) Has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules or court orders, whether at the local, state or federal level; or

(b) Fails to demonstrate character and general fitness sufficient to command the confidence of the patrol and warrant a belief that the business will be operated honestly, fairly and efficiently in the conduct of towing, impound, and vehicle auction activities. In determining character and general fitness, the patrol may consider:

(i) Prior contacts with law enforcement; and

(ii) Criminal record; and

(iii) Reputation in the community; and

(iv) Associations.

(8) Only one application per year to tow on the ((Washington state patrol)) patrol's rotational tow list will be accepted and considered for an applicant who has had their previous application denied or had their letter or contract of appointment revoked. The year will run from the date of application denial or the date of revocation of the letter of (appointment's revocation)) appointment.

(9) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(10) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-170 Minimum tow truck equipment standards. (1) All tow/recovery trucks used by a registered tow operator for public or private impounds or in response to patrol requests must meet the minimum standards ((as)) listed in this section.

~~((Equipment standards will be effective one year from the date of adoption.~~

~~(+)) (2) **Minimum standards:**~~

(a) All equipment used in conjunction with the tow truck winching system must be used in such a way as not to exceed the equipment working load limit. All equipment must comply with the Washington safety and health administration (WSHA) regulation if applicable.

Industry standards set the working load limit of wire rope or equivalent material at one-fifth of the manufacturer's rated nominal or breaking strength.

(b) Each wire rope or equivalent material must be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material must meet the industry standards for specified type of use with equipment.

OSHA (1410.179 (h)(2)(iii)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

(c) The wire rope on each recovery class truck must be equivalent to a 6 x 19 or 6 x 37 "extra improved plowed steel" (XIP) independent wire rope center (IWRC), and must meet all industry standards for working load limit.

(i) The operator must retain a receipt of purchase from the manufacturer indicating the type and WLL of wire rope, and document the type and date the wire rope was installed on each vehicle.

(ii) Class "A," "D," and "E" trucks may utilize either IWRC or fiber core wire rope.

(d) All wire rope must be in good working order. The following industry standards for **out-of-service** criteria will apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, must have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

(i) Recovery or tow hooks must be installed, maintained, and used in the manner in which the manufacturer prescribes.

(ii) Recovery or tow hooks must be replaced if the throat opening has increased beyond the manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(iii) Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., must have permanently affixed durable factory identification, stating the working load limit. If this identification has been removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit and a recertification company identifier. It will be deemed acceptable if the operator maintains a copy of the certification of winching equipment provided the serial number on the equip-

ment corresponds with the certification provided by the manufacturer.

(h) Snatch block hooks that were manufactured with a retractable safety retention clip must have a functional clip installed.

(i) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

(j) All "J" hook chain assemblies must be grade "7" chain or better.

(k) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade "7" chain or meet the original manufacturer's recommendations. Safety chain hooks that were manufactured with retractable safety retention clips must have a functional clip installed.

(l) Comply with legal lighting, equipment, and license requirements.

(m) Portable tail, stop, and turn signal lights for vehicles being towed. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(n) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

(o) Have a revolving, strobe, or intermittent red light with three hundred sixty degrees visibility. Trucks may also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Additionally, trucks must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

(p) Have a broom, minimum twelve inches wide, with a handle at least four feet long.

(q) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon hard or solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

(r) Be maintained in a reasonably clean condition.

(s) Have at least one steel pinch bar four feet long, tapered on one end and flattened on the other with a minimum diameter of three-quarters of an inch.

(t) Have a two-way radio or mobile telephone ~~((system))~~ capable of communicating with a base station. A citizen band radio does not suffice. ~~((A mobile telephone system is acceptable provided that it))~~ The communication device must:

(i) Be in proper working order and function correctly throughout the assigned tow areas for all towing operations including on call drivers.

(ii) Be used in a lawful manner.

(u) Have one 20 BC rated or two 10 BC rated fire extinguishers accessible and secured on or in the tow truck.

(v) Axle weight must comply with the requirements of RCW 46.37.351.

(w) Carry two gallons of absorbent material designed to and capable of absorbing a one-gallon liquid spill from a motor vehicle. For the purposes of this chapter, vehicular liq-

uids consist of motor oil, antifreeze, transmission fluid, and gear oil.

~~((2))~~ (3) Class "A" tow trucks: Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks must meet the requirements of subsection ~~((4))~~ (2)(a) through (w) of this section, and in addition must have:

(a) A fourteen thousand five hundred pound minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum eight-ton boom rating with a single hydraulic boom. Dual winches to control a minimum of two service drums. ~~((Class "A" tow trucks currently in service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.))~~

(e) A minimum of two snatch blocks rated at ~~((3.4))~~ 4.0 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

~~((3))~~ (j) Permanently affixed safety chains.

(4) Class "B" tow trucks: Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks must meet the requirements of subsection ~~((4))~~ (2)(a) through (w) of this section, and in addition must have:

(a) Eighteen thousand pounds minimum manufacturer's gross vehicle weight rating (GVWR).

(b) A minimum of one ~~((fourteen-ton))~~ twelve-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) A minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks rated at ~~((4.5))~~ 4.0 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable when the class "B" tow truck is being used for class "A" tows. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot one-half inch diameter recovery chains used in the winching system and must be grade "8" chain with matching fittings. ~~((Class "B" tow trucks currently in service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.~~

~~(4))~~ (j) Permanently affixed safety chains.

~~(5)~~ **Class "B-2" tow trucks:** ~~((Are))~~ Trucks that are rated at over 30,000 GVWR with air brakes. Class "B-2" tow trucks must

~~((a))~~ meet the requirements of subsection ~~((1))~~ (2)(a) through (w) of this section

~~((b))~~, and in addition must have:

~~(a)~~ A minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

~~((e))~~ (b) A minimum of one fourteen-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of two snatch blocks rated at 6.0 tons each.

(d) Air brakes and a system capable of supplying air to towed vehicles.

(e) Permanently affixed safety chains.

~~(f)~~ Class "B-2" tow trucks must also meet the requirements of subsection ~~((3)(b))~~ (4)(d), ~~((e))~~ (f), (g), (h), and (i) of this section. ~~((Class "B-2" tow trucks currently in service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.~~

~~(5))~~ **(6) Class "C" tow trucks and class "C" rotator trucks:** ~~((Are))~~ Trucks that are capable of towing and/or recovery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks must meet the requirements of subsection ~~((1))~~ (2)(a) through (w) of this section, and in addition must have:

(a) A forty-six thousand pound manufacturer's gross vehicle weight rating (GVWR).

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of thirty-ton boom rating with a hydraulic boom. Dual winches to control a minimum of two service drums. ~~((Class "C" tow trucks currently in service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.))~~

(d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on each drum measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

~~((If equipped with))~~ A wheel lift or underlift system, it must have a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the wheel lift or underlift with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) Permanently affixed safety chains.

(j) All chains must be a minimum of grade "7," except as otherwise specified in this section.

(k) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

~~((1))~~ (1) A minimum of two snatch blocks rated at ~~((eight))~~ 8.0 tons each.

~~((6))~~ **(7) Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" or nonrecovery trucks. Class "D" tow trucks must meet the requirements of subsection ~~((1))~~ (2)(a) through (w) of this section, and in addition must have:

(a) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(b) A wheel lift assembly with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

~~((b))~~ (c) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

~~((e))~~ (d) One snatch block rated at 3.5 tons.

~~((4))~~ (e) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

~~((7))~~ (f) Permanently affixed safety chains.

(8) Class "E" tow trucks: Trucks that are primarily designed and intended to transport other vehicles by loading and carrying the transported vehicle entirely on the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks, unless specifically factory equipped with a side recovery system, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically requested by the patrol.

(a) Class "E" trucks must meet the requirements of subsection ~~((1))~~ (2)(a) through (w) of this section

~~((a))~~, and in addition must have:

(i) Four ~~((securing devices))~~ tiedowns with a minimum working load limit of three thousand four hundred pounds. The ~~((devices))~~ tiedowns must ~~((~~
 (A)) be grade "7" or stronger chain, wire rope, nylon strap, or steel strap.

~~((B) Have tie-downs attached))~~ All four tiedowns must be used when securing a vehicle. The tiedowns must be affixed to the axle, tires, or frame ((member)) of the transported vehicle both front and rear. All tiedown ends must be affixed to the truck bed or rail in a manner that will prevent movement of the transported vehicle. Factory style "T" hook ~~((tie-downs))~~ tiedowns may be used for front and rear securement.

~~((C) Ensure all tie-down ends are secured to the truck bed or rail in a manner that will prevent movement of the transported vehicle.))~~

(ii) One snatch block rated at ~~((3.5))~~ 4.0 tons.

(iii) Dual tires on the rear axle.

(iv) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR).

(v) Current licensing and tonnage equal to the maximum combination GVWR.

(vi) Four-ton winch rating.

(vii) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope.

(viii) One five-foot grade "7" chain with matching fittings for use in winching.

(ix) Nineteen feet of usable bed capable of carrying vehicles.

(x) Portable lights when the truck is used in towing mode. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(b) Class "E" tow trucks may ~~((also))~~ be equipped with a sling, tow bar, and/or a wheel lift system.

(i) If equipped with a towing system~~((;))~~;

(A) The system must have a manufacturer's rating appropriate to the vehicle being towed. If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturer's rating appropriate to the vehicle being towed.

(B) The tow truck must have permanently affixed safety chains.

(ii) ~~((Class "E" trucks are only required to carry portable lights when used in towing mode.))~~ If using a wheel lift system, the transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(c) If factory equipped with a side vehicle recovery system, such system must meet all the winch and wire rope minimum requirements listed for a class "A" truck.

~~((d) Additional minimum class "E" truck requirements include:~~

~~((i) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR);~~

~~((ii) Current licensing and tonnage equal to the maximum combination GVWR;~~

~~((iii) Four ton winch rating;~~

~~((iv) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope;~~

~~((v) One five-foot grade "7" chain with matching fittings for use in winching; and~~

~~((vi) Seventeen feet of usable bed capable of carrying vehicles.~~

~~((e) Class "E" tow trucks currently in service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.~~

~~((8))~~ (9) **Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B," "C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

(a) To be designated as a class "S" truck, the operator must submit a request for approval through the district commander to the section ~~((which))~~ that must include:

(i) Why the truck is needed;

(ii) What the truck will be used for;

(iii) The vehicle size;

(iv) Purchased tonnage if required;

(v) Capability; and

(vi) The equipment carried or used with the truck.

(b) The gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

(c) If the district commander approves the request, the request will be forwarded with recommendations for equipment and/or operation instructions or limitations to the ~~((patrol))~~ section for review and final approval. If approval is granted, the equipment must be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

~~((e) If the provisions of this section require a change in classification for a previously approved tow truck, such change may be made upon the next annual reinspection. In any case, all tow trucks must be correctly classified within one year of adoption of these rules.~~

~~((9))~~ (10) **Class "S-1 rotator" trucks:** ~~((Are tow))~~ Trucks that are capable of recovery, towing, or both of large trucks, trailers, buses, motor homes, or similar vehicles. Class "S-1 rotator" trucks must meet the requirements of subsection ~~((H))~~ (2)(a) through (w) of this section, and in addition must have:

(a) A fifty-two thousand pound manufacturer's GVWR.

(b) Tandem or triple rear axle truck chassis with at least two drive axles.

(c) A minimum of forty ton rotating boom rating with a single boom.

(d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on two drums measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) ~~((Equipped with))~~ A wheel lift system ~~((and have))~~ that has a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the wheel lift or underlift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) All chains must be a minimum of grade "7," except as otherwise specified in this section.

(j) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

~~((j))~~ (k) A minimum of two snatch blocks rated at eight tons each.

(l) Permanently affixed safety chains.

(11) Tow trucks rated as class "A," "B," "B-2," "C," or "E" that are currently in-service with operators holding a current letter of appointment issued by the patrol, not meeting the criteria for classification listed in this section will be allowed to remain on the rotation with those companies.

(12) This section shall be effective on March 1, 2011.

WSR 10-24-069
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 30, 2010, 9:51 a.m., effective December 31, 2010]

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

Purpose: This amendment reduces program costs by eliminating the sanction review panel in response to a budget shortfall. The process will continue to include a case review by someone other than the assigned caseworker. This is an administrative procedural change and it is not expected to impact clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Adopted under notice filed as WSR 10-20-164 on October 6, 2010.

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

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

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

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

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

Date Adopted: November 19, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-12-044, filed 5/26/10, effective 7/1/10)

WAC 388-310-1600 WorkFirst—Sanctions. Effective July 1, 2010.

(1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance sanction case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance sanction case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance sanction case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event

outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What happens in my noncompliance sanction case staffing?

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) What happens if you are sanctioned and stay in sanction;

(ii) How you can participate and get out of sanction;

(iii) How you and your family benefit when you participate in WorkFirst activities;

(iv) That if you continue to refuse to participate, without good cause, ~~((a sanction review panel may review))~~ your case ~~(, and decide to close your case)~~ may be closed after you have been in sanction status for four months in a row;

(v) How you plan to care for and support your children if ~~((a sanction review panel closed))~~ your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vi) How to reapply if ~~((a sanction review panel closes))~~ your case is closed.

(b) If you do not come to your noncompliance sanction case staffing, we will make a decision based on the information we have.

(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?

(a) Before you are placed in sanction, a supervisor will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisor approves the sanction, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request a fair hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if ~~((a sanction review panel closes))~~ your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(6) What is sanction status?

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

(7) Are there penalties when you or someone in your household goes into sanction status?

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) Your grant is reduced by one person's share or forty percent, whichever is more.

(8) How do I end the penalties and get out of sanction status?

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

(c) When you leave sanction status, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(9) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

If your case closes while you are in sanction status and is reopened, you will start out where you left off in sanction.

That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.

(10) What happens if I stay in sanction status?

(a) We will send information to a ~~((sanction review panel))~~ supervisor or designee with a recommendation to close your case.

(b) ~~((The sanction review panel))~~ A supervisor or designee will ~~((review your case and))~~ make the final decision.

(c) If ~~((the sanction review panel))~~ the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.

~~(11) ((What is a sanction review panel?)~~

~~(a) A sanction review panel is a small group of people who are independent of your local community services office and do a thorough, objective review of your sanction.~~

~~(b) The sanction review panel makes the final decision about whether to close your case after receiving a recommendation from your case manager and reviewing your case to make sure the original sanction was appropriate and we made attempts to reengage you in the program.~~

~~(12))~~ **What happens when a ((sanction review panel decides to close)) supervisor or designee approves closure of my case?**

When a ~~((sanction review panel decides to close))~~ supervisor or designee approves closure of your case, we will send you a letter to tell you:

- (a) What you failed to do;
- (b) When your case will be closed;
- (c) How to request a fair hearing if you disagree with this decision;
- (d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and
- (e) How your participation before your case is closed can be used to meet the participation requirement in subsection ~~((13))~~ (12).

~~((13))~~ **(12) What if I reapply for TANF or SFA after a ((sanction review panel closed)) supervisor or designee approved case closure and my case was closed?**

If a ~~((sanction review panel closes))~~ supervisor or designee approves case closure and we close your case, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

**WSR 10-24-070
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 30, 2010, 10:05 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The community services division is amending WAC 388-478-0030 to decrease the grant payment standards to disability lifeline (DL) and ADATSA recipients.

This amendment is necessary to contain costs and maintain the DL program within budget appropriations plus an additional 6.3 percent across-the-board reduction imposed by the governor[s] executive order dated September 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0030.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.04.005, and 74.04.770.

Adopted under notice filed as WSR 10-21-115 on October 20, 2010.

Changes Other than Editing from Proposed to Adopted Version: The ratable reduction was changed from over twenty-four percent to 21.405 percent due to a recalculation of the ratable reduction needed to stay with [within] appropriated funds and comply with the 6.3 percent across the board reductions.

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

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

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

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

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

Date Adopted: November 29, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0030 Payment standards for ((GA-U)) disability lifeline and ADATSA. (1) The payment standards for ~~((general assistance unemployable (GA-U)))~~ disability lifeline (DL) and alcohol and drug addiction treatment and support act (ADATSA) program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$ ((339)) <u>266</u>
2	((428)) <u>336</u>

(2) The payment standards for ~~((GA-U))~~ DL and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$ ((206)) <u>162</u>
2	((261)) <u>206</u>

**WSR 10-24-071
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)**

[Filed November 30, 2010, 10:08 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The department is revising this section to include: (1) Coverage criteria for hysteroscopic sterilizations; and (2) requirements [requirements] for who can perform and be paid for this procedure.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-1550.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 10-20-166 on October 6, 2010.

A final cost-benefit analysis is available by contacting Ellen Silverman, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1570, fax (360) 586-9727, e-mail silvees@dshs.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 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: November 30, 2010.

Katherine I. Vasquez
for Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing. A hysterectomy is a surgical procedure or operation for the purpose of removing the uterus. Hysterectomy results in sterilization, but ~~((MAA))~~ the department does not cover hysterectomy performed solely for that purpose. Both hysterectomy and sterilization procedures require the use of specific consent forms. See subsections (10), (11) and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.

STERILIZATION

(2) ~~((MAA))~~ The department covers sterilization when all of the following apply:

- (a) The client is at least eighteen years of age at the time consent is signed;
- (b) The client is a mentally competent individual;
- (c) The client has voluntarily given **informed consent** in accordance with all the requirements defined in this subsection; and

(d) At least thirty days, but not more than one hundred eighty days, have passed between the date the client gave informed consent and the date of the sterilization.

(3) ~~((MAA))~~ The department does not require the thirty-day waiting period, but does require at least a seventy-two hour waiting period, for sterilization in the following circumstances:

(a) At the time of premature delivery, the client gave consent at least thirty days before the expected date of delivery. The expected date of delivery must be documented on the consent form;

(b) For emergency abdominal surgery, the nature of the emergency must be described on the consent form.

(4) ~~((MAA))~~ The department waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery, and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for **medical assistance** during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

(5) ~~((MAA))~~ The department does not accept informed consent obtained when the client is in any of the following conditions:

(a) In labor or childbirth;

(b) Seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances that affect the client's state of awareness.

(6) ~~((MAA))~~ The department has certain consent requirements that the provider must meet before ~~((MAA))~~ the department reimburses sterilization of a **mentally incompetent** or institutionalized client. ~~((MAA))~~ The department requires both of the following:

(a) A court order; and

(b) A sterilization consent form signed by the legal guardian, sent to ~~((MAA))~~ the department at least thirty days prior to the procedure.

(7) ~~((MAA))~~ The department reimburses epidural anesthesia in excess of the six-hour limit for sterilization procedures that are performed in conjunction with or immediately following a delivery. ~~((MAA))~~ The provider cannot bill separately for BAUs for the sterilization procedure. The department determines total billable units by:

(a) Adding the time for the sterilization procedure to the time for the delivery; and

(b) Determining the total billable units by adding together the delivery BAUs, the delivery time, and the sterilization time.

~~((e)) The provider cannot bill separately for the BAUs for the sterilization procedure.~~

(8) The physician identified in the "consent to sterilization" section of the DSHS-approved sterilization consent form must be the same physician who completes the "physician's statement" section and performs the sterilization procedure. If a different physician performs the sterilization procedure, the client must sign and date a new consent form at the

time of the procedure that indicates the name of the physician performing the operation under the "consent for sterilization" section. This modified consent must be attached to the original consent form when the provider bills ~~((MAA))~~ the department.

(9) ~~((MAA))~~ The department reimburses all attending providers for the sterilization procedure only when the provider submits an appropriate, completed DSHS-approved consent form with the claim for reimbursement. ~~((MAA))~~ The department reimburses after the procedure is completed.

HYSTEROSCOPIC STERILIZATIONS

(10) The department pays for hysteroscopic sterilizations when the following criteria are met:

(a) A department-approved device is used;

(b) The procedure is predominately performed in a clinical setting such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding department fee schedule;

(c) The client provides informed consent for the procedure in accordance with this section; and

(d) The hysteroscopic sterilization is performed by a department-approved provider who:

(i) Has a core provider agreement with the department;

(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);

(iii) Is privileged at a licensed hospital to do hysteroscopies;

(iv) Has successfully completed the manufacturer's training for the device;

(v) Has successfully performed a minimum of twenty hysteroscopies; and

(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.

(12) To become a department-approved provider for hysteroscopic sterilizations, interested providers must send the department the following:

(a) Documentation of successful completion of the manufacturer's training;

(b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;

(c) Documentation attesting to having successfully performed twenty or more hysteroscopies; and

(d) Office protocols for screening and follow-up.

HYSTERECTOMY

~~((10))~~ (13) Hysterectomies performed for medical reasons may require expedited prior authorization as explained in WAC 388-531-0200(2).

~~((11-MAA))~~ (14) The department reimburses hysterectomy without prior authorization in either of the following circumstances:

(a) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(b) The client is forty-six years of age or older.

~~((12-MAA))~~ (15) The department reimburses all attending providers for the hysterectomy procedure only when the provider submits an appropriate, completed DSHS-approved consent form with the claim for reimbursement. If a prior authorization number is necessary for the procedure, it

must be on the claim. ~~((MAA))~~ The department reimburses after the procedure is completed.

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

WSR 10-24-074

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 30, 2010, 10:28 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: Updating chapter 204-50 WAC to include but not limited to certification of ignition interlock service centers, ignition interlock technicians, and updating calibration procedures of ignition interlock devices.

Changes will also provide clarifying language and clean up to existing language.

Citation of Existing Rules Affected by this Order: Amending chapter 204-50 WAC.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, and 46.04.215.

Adopted under notice filed as WSR 10-20-130 on October 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. Numbers were added to the definitions under WAC 204-50-030 and some clean up/clarification was made to some of the definitions. A definition for initial start failure was also added.

2. The phrase "International Organization of Standardization" was changed to "International Organization for Standardization" in WAC 204-50-040, and some clean-up language was provided.

3. Clean-up language was provided in WAC 204-50-046 which includes but is not limited to:

- Changes in WAC 204-50-046 (2)(b)(ii) to provide timeframe for the knowledge and skills examination.
- Changes in WAC 204-50-046 (2)(c)(i) to the alcohol related offenses to limit them to the last three years and two or more within the last five years.
- Changes in WAC 204-50-046 (2)(c)(ii) to the deferred prosecution to pertain to an alcohol related offense within the last three years.
- Changes in WAC 204-50-046 [(2)(c)](iv) to clarify the licensing requirements.
- Changes in WAC 204-50-046 (6)(b) to send notice to the manufacturer and vendor when a technician has been suspended or revoked.

4. Clean-up language was provided in WAC 204-50-050.

5. Changes in WAC 204-50-080 to the reference value to make it ten percent.

6. Changed the word "reader" to "logger" in WAC 204-50-080 (3) and (4).

7. Added language in WAC 204-50-080(6) that will eliminate the mail-in calibration and examination program on January 1, 2012.

8. Changes in WAC 204-50-080 (6)(b)(i) to require a vehicle be inspected at a fixed site service center if enrolled in the mail-in program every one hundred thirty days to mirror the requirement of those not in the mail-in program as requested at the hearing.

9. Clean-up language was added to WAC 204-50-090.

10. Updates to WAC 204-50-100 (2)(a) to remove the requirement that the restricted operator be present for installation and replace it with the requirement that they successfully complete training prior to initial use of the device.

11. Changes to WAC 204-50-110 (1)(e) as suggested to require two mouth pieces upon installation to the driver and an additional mount [mouth] piece every sixty to sixty-five days.

12. Updates to WAC 204-50-110 (1)(h) to set a new deadline for implementation of June 10, 2015, to coincide with the implementation of the fuel cell technology and reworded for clarification.

13. Updates to WAC 204-50-110 (3)(d) to include the person who prepared the report as suggested at the hearing.

14. Changes language in WAC 204-50-120 (1)(c) from the lessee/restricted operator to the service technician and provide clarifying language to outline which counties qualify.

15. Changes in WAC 204-50-130(1) removing the language that restricts the removal of the device within the last four months, referencing requirements of RCW 46.20.720. Also provides clean-up language under subsections (2) and (3).

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 18, 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 18, Repealed 0.

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

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

Date Adopted: November 29, 2010.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-010 Authority. This chapter is promulgated pursuant to RCW 43.43.395, 46.37.005 and 46.04.215.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-020 Purpose. The purpose of this chapter is to establish guidelines for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock (~~breath alcohol~~) devices, as required by RCW 46.04.215 and 43.43.395.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-030 Definitions. The following definitions will apply throughout this chapter:

(1) Alcohol - Means the unique chemical compound ethyl alcohol. For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.

~~((Authorized service provider (ASP) — The person or company meeting all qualifications outlined throughout this chapter and approved and trained by the manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.))~~

(2) Bogus sample - Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with ~~((#))~~ an ignition interlock device.

(3) Breath ~~((or blood))~~ alcohol concentration ~~((BAC))~~ BrAC - Is the amount of alcohol in a person's ~~((blood or))~~ breath determined by chemical analysis, which shall be measured by grams of alcohol per ~~((#~~ (a) 100 milliliters of blood; or ~~((b))~~ 210 liters of breath.

(4) Certification - The testing and approval process required by RCW 46.04.215, 43.43.395 and chapter 204-50 WAC.

(5) Chief - The chief of the Washington state patrol or his or her designee.

(6) Circumvention - Means the attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to, the operation of a vehicle without a properly functioning ignition interlock device, the push start of a vehicle with the ignition interlock device, disconnection or alteration of the ignition interlock device, the introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle, introduction of an intentionally contaminated or altered breath sample, continued operation of the interlock vehicle after the ignition interlock device detects excess breath alcohol.

(7) Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the ignition interlock device.

~~((Device — An ignition interlock breath alcohol device ((#))~~

(8) DOL - The department of licensing of the state of Washington.

(9) Fail level - The ~~((BAC))~~ BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below, or must shut off the vehicle, to avoid registering a violation reset.

(10) Ignition interlock device ~~((HID))~~ - An electronic device that is installed in a vehicle which requires submitting to a ~~((BAC))~~ BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ~~((HID))~~ ignition interlock device detects a ~~((BAC))~~ BrAC test result below the alcohol setpoint, the ~~((HID))~~ ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ~~((HID))~~ ignition interlock device detects a ~~((BAC))~~ BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

(11) Ignition interlock technician - A person employed by the ignition interlock device manufacturer or vendor and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

(12) Impaired driving section ~~((IDS))~~ - The ~~((impaired driving))~~ section of the Washington state patrol that has been designated by the chief of the Washington state patrol to coordinate and regulate ignition interlock devices.

(13) Initial start failure - A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

(14) Lessee - A person who has entered into an agreement with a manufacturer, vendor, or ~~((authorized))~~ service (provider) center to lease ~~((a))~~ an ignition interlock device.

(15) Letter of certification - Means a letter issued by the Washington state patrol that authorizes a manufacturer's ignition interlock device to be used as an ignition interlock device under this chapter; or an ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or a service center location to service, install, monitor, and calibrate ignition interlock devices currently certified for use in Washington state.

(16) Lockout - A period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

(17) Manufacturer - The person, company, or corporation who produces the ignition interlock device, and certifies to ~~((IDS))~~ the impaired driving section that a service ~~((provider))~~ center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, and provide information on the manufacturer's ignition interlock device(s).

(18) OAC - Office of the administrator of the court.

(19) Patrol - The Washington state patrol as defined in RCW 43.43.010.

(20) Restricted operator - A person whose driving privileges are restricted by court order or the department of licens-

ing to operating only motor vehicles equipped with an approved, functioning ((HD)) ignition interlock device.

~~((Simulator - A device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.))~~

(21) Service center - A location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.

(22) Tampering - Any act or attempt to disable or circumvent the legal operation of an ~~((HD))~~ ignition interlock device.

(23) Vendor - An impaired driving section approved company, business, or distributor who is contracted by a manufacturer to manage service centers and/or technicians.

(24) Violation reset - ~~((The condition caused by the failure of the operator of a vehicle to perform a test or retest as required, or by the operator's inability to achieve such test or retest results at the lower of the maximum allowable alcohol concentration as set by the originating court or .025 BAC, the device and the vehicle in which it is installed must be returned to the manufacturer or authorized service provider to be reset))~~ An unscheduled service of the ignition interlock device and required download of the ignition interlock device's data storage system by a service center because the restricted operator has recorded a fail level or a restricted operator failed to have the ignition interlock device serviced within the time period described in this chapter.

(25) Wet bath simulator - A device which when filled with a certified alcohol and water simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-040 ~~((Testing certification, revocation or surrender of certification and recertification.)) Ignition interlock device certification.~~ (1) ~~((Testing and certification.~~

(a) To be certified, a device must:

(i) Meet all standards set under chapter 204-50 WAC;

(ii) Meet or exceed the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement, from a laboratory capable of performing the tests specified, will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the following sentence:

Two samples of (model name), manufactured by (manufacturer) were tested by (laboratory). They do meet or exceed all specifications listed in the Federal Register, Volume 57, Number 67, pages 11774 - 11787.

—Signed _____

(iii) Submit two devices to the IDS for testing and review.

(b) Upon receipt of a statement from a testing laboratory that two samples of a device have successfully passed the test procedures listed in this chapter, and confirmation that all other requirements of this chapter have been met, the chief or designee may issue a letter of certification for the device.

~~(2) Revocation or surrender of certification.~~

(a) The letter of certification will be subject to review by the IDS on an annual basis. It will be valid for three years or until voluntarily surrendered by the manufacturer or until revoked by the chief or designee for cause. Reasons for revocation include but are not limited to:

(i) Evidence of repeated device failures due to gross defects in design, materials, and/or workmanship during manufacture, installation, monitoring, or calibration of the device such that the standards for accuracy and reliability of the devices for which the devices were tested are not being met (as determined by IDS);

(ii) Evidence that the features and functionality of a manufacturer's devices are not being programmed properly by ASP(s) or are being circumvented by lessees such that the standards for anticircumvention for which the devices were tested are not being met;

(iii) Any violation on the part of the manufacturer(s) or ASP(s) of any of the laws or regulations related to the installation, servicing, monitoring, and calibration of devices, including, but not limited to, "other provisions" listed in WAC 204-50-120;

(iv) Notice of cancellation of manufacturer's and/or ASP's required liability insurance is received;

(v) Notification that the manufacturer is no longer in business. This notification must be made immediately to the IDS;

(vi) Notification that material modification or alteration in the components and/or the design of the certified device is not provided or the recertification process is not completed as outlined in WAC 204-50-050.

(b) Unless necessary for the immediate good and welfare of the public, revocation will be effective thirty days from the date of the letter sent to the manufacturer via certified mail, return receipt requested. A copy of each notice of revocation will be provided to the director of the DOL and to the OAC for the state of Washington. The manufacturer's device(s) will be removed from the list of certified devices on the WSP web site.

(c) Upon voluntary surrender, or revocation of a letter of certification for a manufacturer's device, all like devices must be removed and replaced by a certified device, within sixty-five days of the effective date of such surrender or revocation. The ASP must notify all affected lessees of decertification and the requirements for a new device to be installed by an existing ASP.

(d) The IDS will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the period of time as outlined in the WSP records retention schedule.

~~(3) Review for recertification.~~

A manufacturer whose letter of certification has been revoked may request a review of revocation by submitting the request in writing to the chief or designee within thirty days from the date on the revocation letter. The request must

be made in writing and mailed to WSP Impaired Driving Section, 811 East Roanoke St., Seattle, WA 98102.) An application must be approved and letter of certification issued by the chief or designee before a manufacturer's ignition interlock device is authorized for installation pursuant to this chapter.

(2) Application for letter of certification for an ignition interlock device.

(a) A manufacturer must submit an application to the impaired driving section for a letter of certification for its ignition interlock device.

(b) In order to have an ignition interlock device certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section.

(ii) Provide written verification that the ignition interlock device complies with all applicable standards set under RCW 43.43.395 and chapter 204-50 WAC, including written documentation from an International Organization for Standardization (ISO) certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) Provide two ignition interlock devices for testing and review.

(iv) Attach to the application a declaration on the form provided by the impaired driving section that:

(A) The manufacturer, and its employees will cooperate with the impaired driving section at all times, including its inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of ignition interlock device.

(B) The manufacturer agrees to provide all downloaded ignition interlock device data, reports and information related to the ignition interlock device to the impaired driving section in an impaired driving section approved electronic format.

(C) The manufacturer, vendor, and/or ignition interlock technician agrees to provide testimony relating to any aspect of the installation, service, repair, calibration, use, removal or performance of the ignition interlock at no cost on behalf of the state of Washington or any other political subdivision.

(v) Provide the alcohol reference value and type of calibration device used to check the ignition interlock device.

(vi) Provide the Washington state software ignition interlock device configuration profile.

(vii) Provide the impaired driving section, a map of the state of Washington showing the area covered by each certified fixed site and/or mobile service center, areas and the name, address, certification number and telephone number of each service center.

(3) Issuance of a letter of certification for an ignition interlock device or renewal of letter of certification for an ignition interlock device.

(a) The chief or designee will have the authority to issue a letter of certification for a device if all the requirements have been met by the applicant.

(b) Upon receipt of an application for letter of certification, the chief or designee will:

(i) Approve an application under this section if all requirements of this section have been met; or

(ii) Deny the application if all requirements of this chapter have not been met by the applicant. If an applicant is denied, the applicant must wait ninety days before the applicant may resubmit its application for letter of certification for an ignition interlock device.

(c) The chief or designee will notify the applicant in writing if an application for a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(d) A letter of certification for an ignition interlock device will be effective the date stated on the letter.

(e) A letter of certification for an ignition interlock device will be valid for three years or until it is surrendered, suspended, or revoked.

(f) A letter of certification for an ignition interlock device will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(4) Renewal of a letter of certification for an ignition interlock device.

(a) A manufacturer must submit an application to the impaired driving section requesting a renewal of a letter of certification for an ignition interlock device. The renewal request may be submitted ninety days prior to the expiration of a letter of certification, but a renewal request must be submitted within thirty days prior to the expiration of a letter of certification.

(b) For a manufacturer to have its letter of certification for an ignition interlock device renewed, it must submit:

(i) A written request for renewal of a letter of certification for an ignition interlock device.

(ii) Written verification that the ignition interlock device complies with all applicable standards set in RCW 43.43.395 and chapter 204-50 WAC, including a current report from an ISO certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(c) The chief or designee will notify the manufacturer in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certified holder via certified mail, return receipt requested.

(5) Revocation of a letter of certification for an ignition interlock device.

(a) The chief or designee may revoke a letter of certification for an ignition interlock device for a manufacturer's, vendor's, service center's or ignition interlock technician's violation of any of the laws or regulations related to the installation, servicing, monitoring, removal and calibration of ignition interlock devices, including but not limited to, "additional requirements" listed in WAC 204-50-120.

(b) A copy of a notice of revocation for a certification for an ignition interlock device will be provided to the DOL and to the OAC for the state of Washington.

(c) Upon revocation of a letter of certification for an ignition interlock device, the manufacturer's ignition interlock device(s) will be removed from the list of certified ignition interlock devices on the patrol's web site.

(d) If a manufacturer holding a letter of certification for an ignition interlock device is no longer in business, it shall immediately send written notification to the impaired driving section informing it that the manufacturer is no longer in business, and the impaired driving section will revoke its letter of certification.

(e) If a manufacturer holding a letter of certification wishes to voluntarily relinquish its letter of certification, the manufacturer shall send written notice to the impaired driving section advising it that the manufacturer is relinquishing its letter of certification for an ignition interlock device.

(f) Upon voluntary surrender or revocation of a letter of certification for a manufacturer's ignition interlock device, the impaired driving section shall notify all vendors and/or service centers that all of a manufacturer's uncertified ignition interlock devices must be removed and replaced by a certified ignition interlock device within sixty-five days of the effective date of such surrender or revocation. The service center will notify all affected lessees of the revocation of the manufacturer's certification and requirement that a certified service center install and/or replace the ignition interlock device.

(g) The impaired driving section will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the time period required by the patrol records retention schedule.

(h) The chief or designee will notify the manufacturer in writing if a letter of certification has been revoked. The notice of revocation will be sent to the certificate holder via certified mail, return receipt requested.

(6) All ignition interlock devices must employ fuel cell technology on or before June 10, 2015. An ignition interlock device that does not employ fuel cell technology after June 10, 2015, will not be an approved device in Washington state and will have its letter of certification denied or revoked.

NEW SECTION

WAC 204-50-042 Service center certification and inspection. (1) An application must be approved and letter of certification issued by the chief or designee before a fixed or mobile service center may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) Application for certification for a fixed site service center.

(a) A manufacturer or vendor must submit an application to the impaired driving section for a letter of certification for a fixed service center.

(b) In order to have a fixed service center certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section. In the application form the applicant shall disclose:

(A) The physical address of the service center;

(B) The days and hours of operation for the service center;

(C) The type of the certified ignition interlock device it will service;

(D) The type of calibration device it will use for the ignition interlock device(s) it will service.

(ii) Submit a copy of the ignition interlock device data reader download procedures.

(iii) Submit a written statement from a manufacturer that authorizes the service center to install the manufacturer's certified ignition interlock device.

(iv) Submit a list of all fees that may be charged to the lessee to install the manufacturer's certified ignition interlock device.

(3) Application for certification for a mobile site service center.

(a) A manufacturer or vendor must submit an application to the impaired driving section for a letter of certification for a mobile service center.

(b) In order to have a mobile service center certified, the applicant(s) must:

(i) Submit the information required in subsection (1)(b)(i) through (iii) of this section.

(ii) Submit a copy of liability insurance for the vehicle to be used as the mobile service center.

(iii) Submit certification number(s) of the fixed site service center(s) overseeing the mobile service center and the technician(s) that will work from the mobile service center(s).

(iv) Submit a list of all fees or rates that may be charged to a lessee to install, remove, repair, or service an ignition interlock device by a mobile service center.

(4) Inspection of fixed and/or mobile service center.

A vendor or manufacturer must agree to allow access for a representative from the impaired driving section to conduct an inspection at any time during scheduled business hours to ensure compliance as required in chapter 204-50 WAC.

(5) Service center requirements. To receive and maintain a letter of certification, a fixed site service center must:

(a) Be located in a facility which properly accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and/or removing of ignition interlock devices.

(b) Have posted a current copy of all fees and rates a lessee may be charged to install, remove, repair or service an ignition interlock device by a fixed or mobile service center. The fees and rates must be plainly visible and capable of being read at all times by the public.

(c) Provide lessees a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge.

(d) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(e) Comply with all municipal and/or county zoning regulations for commercial businesses.

(f) Have and maintain a designated waiting area that is separate from the installation area for the lessee. The designated waiting area must be shielded from the installation area so a lessee or any other unauthorized person cannot witness the installation or service of the ignition interlock device.

(6) Issuance of letter of certification for a fixed and/or mobile service center.

(a) The chief or designee will have the authority to issue a letter of certification to a fixed and/or mobile service center if all qualifications outlined in this chapter have been met by the applicant.

(b) A letter of certification or a service center must be posted and visible to the public.

(c) The chief or designee will notify an applicant in writing if a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

NEW SECTION

WAC 204-50-046 Ignition interlock technician certification. (1) **The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician.** An application must be approved and letter of certification issued by the impaired driving section before an ignition interlock technician may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) Application for letter of certification for an ignition interlock technician.

(a) A manufacturer, vendor, or service center must submit an application to the impaired driving section for a letter of certification for each ignition interlock technician employed at a fixed or mobile service center.

(b) In order to receive a letter of certification for an ignition interlock technician, the applicant(s) shall:

(i) Complete the application form provided by the impaired driving section.

(ii) Beginning January 1, 2012, or prior to the next renewal, have its employee complete the knowledge and skills examination administered by the impaired driving section. An applicant's employee must score eighty percent or higher on the knowledge and skills examination to be eligible for a letter of certification.

(iii) Submit, at the expense of the manufacturer, service center, vendor or applicant, a criminal history report conducted within the preceding thirty days of the date on the application. The criminal history report shall be attained from either the patrol's identification and criminal history section if the employee has lived in Washington for five years

immediately preceding the date of the application or, a criminal background check from the agency responsible for keeping criminal history in the state or states of the previous residence of an employee who has not lived in Washington for the five years immediately preceding the date of application.

(c) The chief or designee will refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician:

(i) Has been convicted of:

(A) Any alcohol related traffic offense within the last three years;

(B) A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years;

(C) Any offense classified as a felony within the five years prior to the date of the applicant filing an application for certification as an ignition interlock technician.

(ii) Has been granted a deferred prosecution under chapter 10.05 RCW for an alcohol related traffic offense within the last three years.

(iii) Is not at least eighteen years of age.

(iv) Does not possess a valid Washington driver's license if:

(A) The ignition interlock technician is employed by a service center that provides a mobile service center; or

(B) The ignition interlock technician must operate a lessee's vehicle to provide services in accordance with this chapter.

(d) The term "conviction" as used in this section will have the same meaning as used in chapter 9.94A RCW.

(3) Issuance of letter of certification for an ignition interlock technician.

(a) The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician if an application has been approved and all qualifications set out in this chapter have been met by the applicant.

(b) A letter of certification for an ignition interlock technician will be effective the date stated in the letter and contain a certification number specific to the ignition interlock technician.

(c) A letter of certification for an ignition interlock technician will be valid for one year or until suspended, superseded, or revoked by the impaired driving section.

(d) A letter of certification for an ignition interlock technician will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(e) The chief or designee will deny an application for a letter of certification for an ignition interlock technician if all qualifications are not met by the applicant, and it will notify the applicant and service provider or vendor or both within ten days of such determination.

(f) The chief or designee will notify the applicant in writing if an application for letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(4) Renewal of a letter of certification for an ignition interlock technician.

(a) A letter of certification for an ignition interlock technician certification must be renewed on an annual basis.

(b) An application to renew a letter of certification for an ignition interlock technician must be submitted to the impaired driving section at least thirty days prior to the expiration of the certification.

(c) An incomplete or untimely application may result in the expiration of a letter of certification for an ignition interlock technician. If a letter of certification for an ignition interlock technician expires, the ignition interlock technician identified in the expired letter of certification shall immediately stop working as an ignition interlock technician until a new letter of certification is issued by the chief or designee.

(d) Renewal of a letter of certification for an ignition interlock technician will be the same as the process outlined in this section, except the submission of a criminal history report may be submitted by the ignition interlock technician.

(e) If there is pending action against an ignition interlock technician for any violation of the rules outlined in this chapter, an application for the renewal of a letter of certification will not be processed until the pending action has reached a final resolution.

(f) The chief or designee will notify the service center in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certificate holder via certified mail, return receipt requested.

(5) Surrender of a letter of certification for an ignition interlock technician.

(a) An ignition interlock technician letter of certification may be surrendered upon written request from the vendor, service center, or an ignition interlock technician or if the impaired driving section receives written notification that the ignition interlock technician is no longer employed by a certified service center representing the same manufacturer under which the current ignition interlock technician certification was issued.

(b) The original letter of certification must be returned to the impaired driving section. If the original certification is not provided with the written notification the impaired driving section will instruct an inspector to obtain the original certification.

(6) Suspension or revocation of a letter of certification for an ignition interlock technician.

(a) The chief or designee may suspend or revoke certification of an ignition interlock technician who no longer meets all of the requirements outlined under the Revised Code of Washington or this chapter.

(b) The chief or designee will notify the ignition interlock technician, manufacturer and vendor in writing if a letter of certification has been suspended or revoked. The notice of suspension or revocation will be sent to the certificate holder via certified mail, return receipt requested.

(c) During a period of suspension of a letter of certification for an ignition interlock technician, the suspended ignition interlock technician shall cease any and all activities related to the repair, installation, removal, or service of a certified ignition interlock device in the state of Washington.

(d) If a letter of certification for an ignition interlock technician is suspended or revoked the ignition interlock technician shall, on demand, surrender the certification and return it to the impaired driving section.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-050 Modifications to a certified ignition interlock device. ~~((The))~~ (1) A manufacturer ~~((must))~~, vendor or service center shall immediately notify ~~((HDS))~~ the impaired driving section, in writing, of any material modification. A material modification is any additional features, software configuration changes or alteration in the components and/or the design of the certified ignition interlock device. ~~((Within ninety))~~ Written notification of a material modification may be submitted to the impaired driving section in an electronic format approved by the impaired driving section.

(2) A manufacturer must resubmit evidence of compliance as required in WAC 204-50-040 to the impaired driving section within thirty days of notifying the ~~((HDS))~~ impaired driving section of ~~((the))~~ a material modification ~~((or alteration to a certified device, the manufacturer must resubmit to HDS the evidence of compliance as required in WAC 204-50-040)).~~

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-070 Variable calibration of an ignition interlock device. To be certified, ~~((a))~~ an ignition interlock device must be capable of being preset, by the manufacturer, vendor, service center or by an ~~((ASP))~~ ignition interlock technician, at any fail level from .02 through ~~((-.09% BAC))~~ .09 g/210L BrAC (plus or minus ~~((-.005% BAC))~~ .005 g/210L BrAC). The actual setting of each ignition interlock device, unless otherwise mandated by the originating court, must be ~~((-.025 BAC))~~ .025 g/210L BrAC. The capability to change this setting must be made secure, by the manufacturer, vendor, service center or by an ~~((ASP))~~ ignition interlock technician.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-080 Certified ignition interlock device maintenance, calibration and reports. (1) Each ~~((lessee must))~~ restricted operator shall have the ignition interlock device installed in the restricted operator's vehicle(s) examined by the manufacturer, vendor, service center or ~~((by an ASP))~~ ignition interlock technician for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

(2) ~~((The))~~ An ignition interlock device must be calibrated for accuracy ~~((according to the manufacturer's and the HDS's procedures))~~ by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L. The result must be within plus or minus ten percent of the reference value introduced into the ignition interlock device.

(a) Wet bath simulators must:

(i) Use a mercury in glass or digital thermometer ~~((with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade)).~~ These thermom-

eters must read 34 plus or minus .2 degrees Centigrade during analysis and be certified annually using a National Institute of Standards and Technology (NIST) ~~((certified))~~ traceable digital reference thermometer.

(ii) Be found on the current National Highway Traffic Safety Administration confirming products list of calibrating units for breath alcohol testers.

(iii) Use alcohol reference solutions prepared and tested in a laboratory such that their reference value is shown to be traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution must be tamper proof and labeled with the following: Lot or batch number, value of the reference sample in g/210L, and date of preparation and/or the expiration which must not be longer than one year from the date of preparation.

(b) Dry gas alcohol standards must be certified to a known reference value and traceable to National Institute of Standards and Technology - NIST Traceable Reference Material (NIST-NTRM) ethanol standards. ~~((This known))~~ The reference value will ~~((also))~~ be adjusted for pressure changes due to elevation to which the dry gas is being used.

~~((3))~~ All data (i) Dry gas alcohol standard tanks must:

(A) Be stored in an environment where the temperature range remains between 50-104 degrees Fahrenheit.

(B) Have a label which will contain the following: Components and concentration of the reference value of the gas, expiration date which must not be longer than three years from the date of preparation, and the lot or batch number.

(ii) Each service center using a dry gas alcohol standard will have:

(A) An elevation chart which will be used to determine the proper reference value for the elevation for which the gas standard is being used.

(B) The certificate of analysis from the dry gas standard manufacturer.

(3) The results of each calibration including the reference value, calibration check, and any adjustments made for elevation pressure must be recorded on the ignition interlock device data logger and/or data base.

(4) Data contained in ~~((the))~~ an ignition interlock device's memory or data logger must be downloaded and the manufacturer, vendor and/or ~~((the ASP))~~ service center must make ~~((a hard copy or))~~ an electronic ~~((equivalent))~~ copy of the client data and the results of each examination.

(5) Data downloaded by a manufacturer, vendor and/or service center from an ignition interlock device must be:

(a) Reviewed by the manufacturer, vendor, ignition interlock technician, and/or service center. Any evidence of noncompliance, violations, or signs of tampering and/or circumvention must be reported as requested by, and in a format acceptable to the originating court, ~~((HDS))~~ impaired driving section and/or DOL.

(b) All information obtained as a result of each calibration or inspection must be retained by the manufacturer, vendor or ~~((approved))~~ service ~~((provider))~~ center for ~~((two))~~ three years from the date the ignition interlock device is removed from the vehicle.

~~((4))~~ (6) The mail-in calibration and examination program will cease on January 1, 2012. Any ~~((ASP))~~ service center proposing to offer a mail-in calibration and examina-

tion program to their lessees must obtain written approval from ((HDS)) the impaired driving section prior to implementing the mail-in program.

(a) To obtain approval ~~((the ASP))~~ for a mail-in calibration and examination program, a service center must submit a copy of written procedures outlining how the mail-in program will ~~((work))~~ comply with the requirements of this chapter.

(b) Written procedures for a mail-in calibration and examination program must include:

(i) A requirement that all restricted operators enrolled in the mail-in program have the ignition interlock device calibrated, downloaded, the ignition interlock device's wiring harness physically inspected in the vehicle in which it was installed at a fixed site or mobile service center of the manufacturer every one hundred thirty days for the period of installation.

(ii) A restriction prohibiting restricted operators from using the program during the last four months of a restricted operator's DOL or court mandated ignition interlock device period.

(iii) A disqualification for a restricted operator from the mail-in program if their data reader or data base shows a breath alcohol sample equal to or greater than .040 g/210L, or if a restricted operator and/or lessee has a violation reset condition.

~~((ASP))~~ (c) The manufacturer, vendor, ignition interlock technician or service center must ~~((also))~~ provide ~~((the customer))~~ a restricted operator with written instructions on how to utilize the mail-in program.

(d) A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.

~~((5))~~ (7) The manufacturer, vendor and/or ~~((ASP))~~ service center must provide, upon request, additional reports in a format acceptable to and at no cost to DOL, ~~((HDS))~~ impaired driving section and/or the originating court.

~~((6) The ASP)~~ (8) A service center must maintain records documenting all calibrations, downloads and any other services performed on an ignition interlock device, ~~((to include))~~ including service of a violation reset ~~((service))~~. Charges for installations, calibrations, downloads and service must be made using a numbered billing invoice. The billing invoice must contain the date of service and all fees for service must be itemized.

~~((7))~~ (9) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained on site for a minimum of ~~((two))~~ three years.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-090 Ignition interlock device security. ~~((The))~~ (1) A manufacturer and its ~~((approved))~~ vendors, service ~~((provider(s)))~~ center(s), and ignition interlock technicians must take all reasonable steps necessary to prevent tampering or physical circumvention of ~~((the))~~ an ignition interlock device. These steps must include:

~~((1))~~ (a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer, and/or vendor.

(2) In addition, ~~((the approved))~~ a service ~~((provider))~~ center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert ~~((manufacturer's))~~ manufacturer, vendor or ~~((approved))~~ service ~~((provider's))~~ center's toll free number."

(3) No owner or employee of a manufacturer ~~((of ASP)),~~ vendor or service center may authorize or assist with the disconnection of ~~((a))~~ an ignition interlock device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock device, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's, vendor's, service center, and/or ignition interlock technician's certification under ~~((WAC 204-50-040))~~ chapter 204-50 WAC.

(4) All known ignition interlock device circumventions or tampering must be reported to the ~~((HDS upon request))~~ impaired driving section in an impaired driving section approved electronic format within seven days of determining that an ignition interlock device was circumvented or tampered with.

NEW SECTION

WAC 204-50-100 Installation of ignition interlock devices. (1) An ignition interlock device can only be installed by a certified ignition interlock technician.

(2) An ignition interlock technician shall not install an ignition interlock device on a vehicle unless the restricted operator is:

(a) Successful in completing all training prior to initially using the ignition interlock device;

(b) The registered owner of the vehicle or has a signed letter of authorization from the registered owner approving the ignition interlock device installation; and

(c) Provided ignition interlock device training by the manufacturer, vendor, service center, and/or certified technician. If the impaired driving section and/or DOL provides educational materials to the manufacturer, vendor, service center and/or technician, those training materials will be provided to the restricted operator and/or lessee in addition to the training required under this section.

(3) An ignition interlock technician shall:

(a) Record the following information before installing an ignition interlock device:

(i) The full name, current address, phone number, driver's license number of the lessee and/or restricted operator.

(ii) The vehicle license registration number for the vehicle in which the ignition interlock device is to be installed.

(iii) The unique serial number of the ignition interlock device installed and corresponding vehicle license registration number of the single vehicle in which it was installed.

(b) Ensure that no restricted operator, lessee or other unauthorized person witnesses the installation, service or removal of an ignition interlock device.

(c) Inspect all vehicles prior to installation of an ignition interlock device to determine if parts of a vehicle affected by an ignition interlock device are in acceptable condition and an ignition interlock device shall not be installed until the vehicle is in acceptable condition.

(d) Follow the manufacturer's instructions and regulations outlined in this chapter for the installation, servicing and removal of ignition interlock devices.

(e) Install the following physical anti-tampering measures:

(i) Place all connections and associated wiring between an ignition interlock device and a vehicle in an area of the vehicle not immediately accessible or visible to the lessee or restricted operator.

(ii) Cover with a unique and easily identifiable seal, epoxy, resin, shrink wrap, sheathing, or tamper proof tape:

(A) Any portion of an ignition interlock device that can be disconnected;

(B) Any wires used to install the ignition interlock device that are not inside a secured enclosure; and

(C) Mark points likely to be accessed when attempting to tamper with the ignition interlock device with other material unless the ignition interlock device is capable of recording such attempts to tamper with it.

(4) A service center or ignition interlock technician will:

(a) Thoroughly train a restricted operator on the proper use and functionality of an ignition interlock device; and

(b) Provide a user reference, operation, and problem-solving guide in English or Spanish to the restricted operator when an ignition interlock device is installed.

(5) A service center or ignition interlock technician will be available during all posted hours of operation to answer all questions and handle any problems related to a restricted operator's ignition interlock device, including repair or replacement of an inoperable or malfunctioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-110 Mandatory (~~operational features~~) requirements for an ignition interlock device. (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

~~((1))~~ (a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

~~((2))~~ (b) Automatically and completely purge residual alcohol before allowing subsequent tests.

~~((3))~~ (c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

~~((4))~~ (d) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

~~((4))~~ ~~Be provided with an ample~~ (e) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into ~~(the)~~ an ignition interlock device, and an additional mouth piece with every sixty to sixty-five day calibration period.

~~((5))~~ (f) Be uniquely serial numbered. ~~(Along with any other information required by DOL or by an originating court, all reports to DOL or to an originating court concerning a particular device must include the name, address, and driver's license number of the lessee, and the unique number of the device. The name, address, telephone number (toll free), and contact person of the manufacturer or approved service provider furnishing such report must also be included as part of the report.~~

~~((6))~~ (g) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of ~~(the test)~~ all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

~~((7))~~ (h) On or before June 10, 2015, require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and thirty minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

(i) Require the operator of the vehicle to submit to a retest within ten minutes of starting the vehicle. ~~(Retesting)~~ A rolling retest must continue at randomly variable intervals ~~(not to exceed sixty minutes after the first retest)~~ ranging from ten to forty-five minutes after the previous retest for the duration of the travel. ~~(The device must:~~

~~(a))~~ (j) Be equipped with a method of immediately notifying ~~(peace)~~ law enforcement officers if ~~(the required retest(s) above is not performed,)~~ a violation reset occurs from a rolling retest or ~~(if)~~ the result of the retest exceeds the lower of ~~(.025 BAC)~~ .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court. ~~(Examples of acceptable)~~ Acceptable forms of notification are repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlamps, or the ~~(warning)~~ use of ~~(a small siren)~~ an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of ~~(.025 BAC)~~ .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court.

~~((b))~~ Automatically enter a violation reset condition. A device which enters a violation reset condition and the vehicle in which it is installed, must be returned to the manufacturer or ASP to be serviced) (k) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physi-

cally inspected within five days ~~((or the device must render the vehicle inoperable))~~ of when the violation reset occurred.

(2) The manufacturer, vendor, ignition interlock technician or ~~((approved))~~ service ~~((provider must))~~ center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court ~~((within five days of servicing the device))~~. The manufacturer, vendor or ~~((ASP))~~ service center must provide notification to DOL and ~~((HDS))~~ impaired driving section in ~~((a format))~~ an acceptable electronic format should DOL or ~~((HDS))~~ impaired driving section promulgate rules requiring such notification of a violation reset condition.

(3) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-120 ~~((Other provisions.))~~ Additional requirements. (1) Notwithstanding other provisions of this chapter, each manufacturer of a certified ignition interlock device, either on its own or through ~~((its approved))~~ a vendor or service ~~((provider(s) must))~~ center shall:

~~((4))~~ (a) Guarantee repair or replacement of a defective ignition interlock device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint or known failure of an ignition interlock device.

~~((2))~~ (b) Demonstrate to the satisfaction of ~~((HDS))~~ impaired driving section, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's ignition interlock device within a seventy-five mile radius of his or her place of residence.

~~((3))~~ Provide ~~HDS~~, a map of the state of Washington showing the area covered by each approved service provider, and the name, address, and telephone number of each approved service provider.

~~((a))~~ (c) Receive written approval from impaired driving section and require mobile service ignition interlock technicians to sign an agreement to abide by all aspects of WAC 204-50-080 before mobile service centers may work outside of the umbrella of their overseeing fixed site service center(s) to provide service in rural counties of the state. Qualifying rural counties under the Washington state department of health guidelines include: Jefferson, Pacific, Wahkiakum, Klickitat, San Juan, Columbia, Garfield, Adams, Lincoln, Pend Oreille, Stevens, Ferry, and Okanogan counties.

~~((d))~~ Provide written notification of any changes to ~~((its authorized))~~ a manufacturer's service ~~((provider))~~ center network to the impaired driving section within ~~((ten))~~ seven days of such change.

~~((b))~~ Any additions to the approved service provider network, provide evidence to ~~HDS~~ that any added ASPs have the insurance coverage as required by subsection (7) of this section.

~~((4))~~ (e) Maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees and/or restricted operators to call if they have problems with the ignition interlock device they have leased from the manufacturer, vendor or ~~((approved))~~ service ~~((provider))~~ center. Calls must either be answered by ~~((a))~~ an ignition interlock technician qualified to service the manufacturer's ignition interlock devices, or the call must be returned by a qualified technician within thirty minutes of the original call.

~~((5))~~ Provide the lessee a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge. To ensure equal accessibility of the benefits of this technology to all citizens of the state of Washington, such pricing must be uniform statewide.

~~((6))~~ Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

~~((7))~~ (2) The manufacturer shall provide to ~~((HDS))~~ the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered must include, but not limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify ~~((HDS))~~ the impaired driving section not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection ~~((8))~~ (3) of this section.

~~((8))~~ (3) A vendor or service center shall provide ~~((HDS))~~ the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that each and every ~~((ASP))~~ service center has:

(a) Garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered must include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the ~~((ASP))~~ service center. ~~((Further must provide HDS proof that each and every ASP has completed))~~

(b) Operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered must include, but not

be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring.

~~((All such))~~ (c) Insurance ~~((must be))~~ provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify ~~((HDS))~~ the impaired driving section not less than thirty days before expiration or termination of such coverage.

(d) Insurance coverage required in this subsection must be in addition to and not considered a replacement for other coverage required in ~~((subsection (6) of))~~ this section.

~~((9))~~ (4) A vendor or service center shall notify the DOL in an acceptable format and if so requested by the originating court, notify the originating court, if any, of the removal of ~~((a))~~ an ignition interlock device under any circumstances other than:

(a) Immediate ignition interlock device repair needs.

(b) Removal of the ignition interlock device in order to switch it to a replacement vehicle to be operated by the restricted operator. Report of such a vehicle switch including the license of the vehicle must be transmitted to the DOL, and the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the ignition interlock device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. **NOTE:** Whenever ~~((a))~~ an ignition interlock device is removed for repair, and cannot be immediately reinstalled, a substitute ignition interlock device must be utilized. Under no circumstances will a manufacturer ~~((or ASP))~~, service center or ignition interlock technician knowingly permit a restricted operator to drive a vehicle not equipped with a functioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-130 ~~((Removal procedures:))~~ Requirements for removing an ignition interlock device. ~~((The manufacturer or its approved service provider must remove the device and return the vehicle in normal operating condition. The manufacturer or its ASP must provide any final report requested by the originating court, IDS and/or requested by DOL-))~~ (1) A vendor will determine a restricted operator's compliance of this section in accordance with RCW 46.20.720.

(2) The manufacturer or its service center must return the vehicle in normal operating condition after it removes an ignition interlock device.

(3) An ignition interlock technician or service center can only remove an ignition interlock device for which they have been certified to service, unless an ignition interlock technician or service center has received approval from the impaired driving section allowing it to remove an ignition interlock device that it has not been certified to service.

(4) A manufacturer or its service center shall provide any final report requested by the originating court, impaired driving section and/or requested by DOL to the requestor once the ignition interlock device has been removed from a restricted operator's vehicle(s).

NEW SECTION

WAC 204-50-140 Review of denial, suspension or revocation of certification. (1) The chief or designee may deny, suspend, or revoke a letter of certification for an ignition interlock device, service center, or ignition interlock technician upon receiving evidence that any letter of certification holder has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process will be used:

(a) The chief or designee will give the applicant or certificate holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of certification, except as provided in subsection (2) of this section.

(b) Upon receiving notice of the action, the applicant, or certificate holder may request an administrative hearing to contest the decision. A request for an administrative hearing must:

(i) Be made in writing and mailed to the Washington State Patrol Impaired Driving Section, 811 East Roanoke St., Seattle, WA 98102; and

(ii) Be received by the patrol's impaired driving section within twenty business days after the date of the notice of action.

(2) The chief or designee may, without prior notification, suspend a letter of certification for a device, service center, or ignition interlock technician if the chief or designee finds that there is danger to the public health, safety, or welfare that requires immediate action. For every summary suspension of a letter of certification, an order signed by the chief or designee must be entered in accordance with the provisions of RCW 34.05.479.

(3) Failure to request a hearing or failure to appear at a hearing, a prehearing conference, or any other stage of an adjudicative proceeding may constitute default and result in the entry of a final order under RCW 34.05.440.

(4) Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action will be promptly instituted and determined. The chief or designee must give notice as practicable to the letter of certification holder.

(5) Unless the chief or designee finds the immediate revocation is necessary or unless the certificate holder timely requests a hearing as provided under this section, a decision to revoke or suspend will be effective thirty days from the date of the notice of action decision unless the chief or designee finds that immediate revocations is necessary.

NEW SECTION

WAC 204-50-150 Hearing procedure. (1) Hearings under this chapter will be pursuant to chapters 34.05 RCW and 10-08 WAC as supplemented by this section.

(2) A presiding officer will conduct a hearing and any prehearing conference(s).

(3) The burden of proof in any hearing will be on the applicant seeking the letter of certification, or on the person or agency seeking the suspension or revocation of a letter of certification or other action by the chief or designee.

(4) Oral proceedings must be recorded by the method chosen by the chief or designee and such recording will become part of the hearing record.

(5) The following process applies to administrative hearings under this chapter:

(a) The patrol will notify the assistant attorney general of the petitioner's request for an administrative hearing.

(b) The assistant attorney general will draft an administrative complaint and send it to the petitioner and to the office of administrative hearings.

(c) The office of administrative hearings will schedule a hearing date, and will notify the petitioner, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(d) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(e) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the patrol.

(f) At the hearing, the petitioner may be represented by an attorney or may choose to represent himself or herself. The petitioner or his/her attorney will be allowed to present witnesses and other evidence.

(g) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(6) Initial and final order. At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the petitioner and the assistant attorney general.

(a) Either the petitioner or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

NEW SECTION

WAC 204-50-160 Appeal. Any person aggrieved by the decision of the chief or designee denying, suspending, or revoking a certification may appeal such decision to the superior court under the provisions of chapter 34.05 RCW.

WSR 10-24-085 PERMANENT RULES BOARD OF

PILOTAGE COMMISSIONERS

[Filed November 30, 2010, 12:41 p.m., effective December 31, 2010]

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

Purpose: To provide adequate revenue by adjusting pilot license fees and vessel exemption fees to support the continuation of board operations. Also, to provide additional revenue by adjusting the training surcharge to defray some of the board's training-related costs beyond trainee stipends.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-070, 363-116-300, and 363-116-360.

Statutory Authority for Adoption: Chapter 88.16 RCW. Adopted under notice filed as WSR 10-20-170 on October 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: The adopted amount of increase to the annual pilot license fee is \$500 rather than the proposed increase which ranged from \$1,500 - \$3,000.

The adopted amount of increase to the "training surcharge" is \$5 rather than the proposed \$10.

The adopted amount of increase to the existing chart of vessel exemption fees resulted in the fifty percent increase as proposed; but also, an additional category was created which covers yachts measuring up to and including fifty feet LOA. This size group was formerly covered in the broader category for yachts measuring up to and including one hundred feet LOA. This category was split and the fifty percent increase was applied only to the upper half (yachts fifty-one - one hundred feet LOA). The fees for the new smaller category remain the same.

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

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

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

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

Date Adopted: November 9, 2010.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-070 Collection of fees. All pilots shall pay an annual license fee of six thousand five hundred dollars or such amount as may be set by statute for every year in which they perform any pilotage services. If a licensed pilot

does not perform pilotage services during a license year, his/her fee for that year shall be reduced to one thousand dollars upon application to the board. The board of pilotage commissioners shall receive all fees for licenses or for other purposes and make proper accounting of same and transmit all such funds to the pilotage account.

AMENDATORY SECTION (Amending WSR 10-12-059, filed 5/27/10, effective 7/1/10)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, 2010, through 2400 hours June 30, 2011.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	\$48.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$349.00
Radio Direction Finder Calibration	\$349.00
Launching Vessels	\$524.00
Trial Trips, 6 hours or less (minimum \$984.00)	\$164.00 per hour
Trial Trips, over 6 hours (two pilots)	\$328.00 per hour
Shilshole Bay – Salmon Bay	\$205.00
Salmon Bay – Lake Union	\$159.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	\$205.00
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of \$258.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$123.00 per bridge.

Ships 90' beam and/or over:

A charge of \$350.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$244.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus \$266.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$266.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$266.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$266.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$266.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$0.0082 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of \$0.0846 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be \$0.1012 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00

Direct Transit Charge

\$2,107.00

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

\$283.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.

\$283.00 per hour

Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses. \$525.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. \$499.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. \$630.00

Training Surcharge:

On January 1, 2011, a surcharge of \$(~~40.00~~) 15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	255	396	675	1,006	1,354	1,757
450 - 459	266	403	679	1,021	1,376	1,766
460 - 469	268	407	690	1,038	1,395	1,774
470 - 479	277	419	698	1,059	1,399	1,777
480 - 489	285	426	701	1,078	1,408	1,785
490 - 499	289	432	712	1,098	1,424	1,794
500 - 509	304	440	722	1,110	1,436	1,805
510 - 519	306	448	729	1,127	1,451	1,812
520 - 529	310	464	740	1,132	1,464	1,826
530 - 539	319	470	749	1,145	1,487	1,847
540 - 549	324	476	766	1,157	1,510	1,864
550 - 559	331	492	771	1,174	1,522	1,882
560 - 569	343	512	786	1,185	1,536	1,899
570 - 579	350	516	789	1,190	1,552	1,912
580 - 589	365	524	808	1,199	1,561	1,931
590 - 599	382	536	813	1,205	1,584	1,954
600 - 609	396	552	824	1,209	1,604	1,963
610 - 619	418	557	838	1,214	1,619	1,981
620 - 629	434	564	846	1,229	1,638	2,004
630 - 639	454	574	855	1,232	1,652	2,021
640 - 649	472	587	864	1,234	1,666	2,036
650 - 659	505	597	880	1,244	1,686	2,057
660 - 669	515	605	887	1,251	1,705	2,073
670 - 679	534	620	896	1,274	1,724	2,086
680 - 689	541	630	908	1,284	1,739	2,106
690 - 699	557	640	922	1,307	1,757	2,150
700 - 719	582	661	939	1,324	1,791	2,174
720 - 739	616	679	963	1,342	1,826	2,210
740 - 759	640	712	982	1,354	1,864	2,250
760 - 779	665	734	1,006	1,376	1,899	2,279
780 - 799	698	767	1,021	1,395	1,931	2,320
800 - 819	726	789	1,041	1,402	1,963	2,355

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
820 - 839	749	818	1,065	1,424	2,004	2,382
840 - 859	781	851	1,086	1,441	2,034	2,423
860 - 879	810	880	1,105	1,478	2,073	2,458
880 - 899	838	905	1,127	1,512	2,106	2,494
900 - 919	863	935	1,146	1,551	2,150	2,528
920 - 939	890	963	1,174	1,584	2,172	2,563
940 - 959	922	988	1,191	1,619	2,210	2,594
960 - 979	943	1,017	1,212	1,652	2,250	2,633
980 - 999	974	1,041	1,233	1,686	2,279	2,667
1000 - 1019	1,034	1,108	1,288	1,776	2,387	2,782
1020 - 1039	1,062	1,141	1,328	1,826	2,459	2,863
1040 - 1059	1,094	1,169	1,367	1,882	2,529	2,948
1060 - 1079	1,127	1,210	1,407	1,938	2,608	3,035
1080 - 1099	1,161	1,244	1,448	1,994	2,684	3,127
1100 - 1119	1,194	1,282	1,492	2,056	2,765	3,221
1120 - 1139	1,231	1,323	1,538	2,116	2,848	3,317
1140 - 1159	1,266	1,360	1,582	2,179	2,934	3,418
1160 - 1179	1,304	1,399	1,632	2,245	3,021	3,518
1180 - 1199	1,344	1,442	1,679	2,312	3,113	3,625
1200 - 1219	1,385	1,485	1,728	2,382	3,206	3,732
1220 - 1239	1,424	1,530	1,779	2,453	3,300	3,844
1240 - 1259	1,467	1,575	1,831	2,526	3,400	3,958
1260 - 1279	1,510	1,621	1,887	2,602	3,503	4,077
1280 - 1299	1,555	1,671	1,945	2,680	3,605	4,200
1300 - 1319	1,603	1,718	2,001	2,759	3,714	4,324
1320 - 1339	1,651	1,771	2,063	2,842	3,824	4,455
1340 - 1359	1,698	1,824	2,124	2,926	3,939	4,589
1360 - 1379	1,750	1,877	2,187	3,016	4,055	4,724
1380 - 1399	1,801	1,933	2,254	3,104	4,178	4,868
1400 - 1419	1,856	1,992	2,319	3,196	4,302	5,013
1420 - 1439	1,911	2,052	2,389	3,293	4,433	5,163
1440 - 1459	1,970	2,114	2,462	3,391	4,565	5,317
1460 - 1479	2,025	2,175	2,534	3,492	4,702	5,474
1480 - 1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807

AMENDATORY SECTION (Amending WSR 97-12-018, filed 5/28/97, effective 6/28/97)

WAC 363-116-360 Exempt vessels. (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels or yachts, which are not more than five hundred gross tons (international), do not exceed two hundred feet in length, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British

Columbia. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least sixty days prior to planned vessel operations in the Puget Sound pilotage district where possible.

Petitions filed with less than sixty days notice may be considered by the chair at the chair's discretion.

(b) The petition requesting exemption shall be on a board-approved form which shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the dates of planned operations, and such other information as the board shall require on its petition form.

(c) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be reviewed by the chair, who shall make a recommendation to the board to be considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist. Any grant of an interim exemption may contain such conditions as the chair deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include a requirement that the vessel employ the services of a pilot on its initial voyage into Puget Sound waters or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement.

(3) The recommendation of the chair shall be considered at the next regular or specially scheduled meeting of the board. Interested parties shall receive notice and opportunity for hearing at that time, provided that the party notifies the board at least five days in advance of the meeting of its desire for hearing.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
A. Yachts			
<u>Up to and including 50 feet LOA</u>	<u>\$ 300</u>	<u>\$ 500</u>	<u>\$ 200</u>
Up to <u>and including</u> 100 feet LOA	(\$ 300) <u>450</u>	(\$ 500) <u>750</u>	(\$ 200) <u>300</u>
Up to <u>and including</u> 200 feet LOA	(\$ 500) <u>750</u>	(\$ 750) <u>1125</u>	(\$ 300) <u>450</u>
B. Passenger Vessels			
Up to <u>and including</u> 100 feet LOA	(\$ 750) <u>1125</u>	(\$ 1000) <u>1500</u>	(\$ 400) <u>600</u>

	3 Months or Less	1 Year or Less	Annual Renewal
A. Yachts			
Up to <u>and including</u> 200 feet LOA	(\$ 250) <u>1500</u>	1500	(\$ 500) <u>750</u>

**WSR 10-24-093
PERMANENT RULES
UNIVERSITY OF WASHINGTON**

[Filed November 30, 2010, 3:25 p.m., effective December 31, 2010]

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

Purpose: During the 2009 legislative session, chapter 241, Laws of 2009 amended RCW 28B.10.590 and required the University of Washington to amend its rules accordingly. The statute now requires book stores affiliated with the University of Washington to disclose additional specific information to students on required course materials, and for University faculty to consider additional means by which to provide the least costly course materials, when educational content is comparable. The University of Washington has amended chapter 478-165 WAC with essentially the same language as the amended statute.

Citation of Existing Rules Affected by this Order: Amending WAC 478-165-040 and 478-165-050.

Statutory Authority for Adoption: RCW 28B.10.590 and 28B.20.130.

Other Authority: University of Washington Board of Regents' Standing Orders, Chapter 1, Section 2.

Adopted under notice filed as WSR 10-19-114 on September 21, 2010.

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

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

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

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

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

Date Adopted: November 30, 2010.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 07-16-034, filed 7/23/07, effective 8/23/07)

WAC 478-165-040 Affiliated book store responsibilities. In making course materials available for purchase, any University of Washington affiliated book store should:

(1) Provide students the option of purchasing materials that are unbundled when possible;

(2) Disclose to faculty and staff the costs to students of purchasing materials, and work with faculty and staff to encourage publishers to provide information showing how new editions vary from previous editions and to make this information available publicly;

(3) Actively promote and publicize book buy-back programs; ~~((and))~~

(4) Disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available; and

(5) Disclose information to students on required course materials including, but not limited to, title, authors, edition, price, and International Standard Book Number (ISBN) at least four weeks before the start of the class for which the materials are required. The provost may waive the disclosure requirement provided in this subsection on a case-by-case basis, if students may reasonably expect that nearly all information regarding course materials is available four weeks before the start of the class for which the materials are required. The requirement provided in this subsection does not apply if the faculty member using the course materials is hired four weeks or less before the start of class.

AMENDATORY SECTION (Amending WSR 07-16-034, filed 7/23/07, effective 8/23/07)

WAC 478-165-050 Faculty and staff obligations. In assigning course materials, faculty and staff members shall consider the least costly practices~~(s)~~ which may include, but are not limited to~~((~~

~~(1))~~, adopting the least expensive edition of materials available, consistent with copyright restrictions, adopting free, open textbooks when available, and working with librarians to provide compilations of web and library resources that are freely available to students, when educational content is comparable as determined by the faculty~~((; and~~

~~(2) Working closely with publishers and local book stores to create bundles and packages of course materials only if they deliver additional value or cost savings to students)).~~

WSR 10-24-099
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 1, 2010, 8:19 a.m., effective January 1, 2011]

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

Purpose: The purpose of this proposal is to amend, draft, and repeal department WACs to ensure compliance with the federal Internal Revenue Code.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-106-050, 415-106-060, 415-106-070, 415-108-181, 415-108-182, 415-108-183, 415-110-050, 415-110-060, 415-110-070, 415-112-050, 415-112-060 and 415-112-070; and amending WAC 415-02-030.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 10-21-069 on October 18, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 1, Repealed 12; 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 8, Amended 1, Repealed 12.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 1, Repealed 12.

Date Adopted: December 1, 2010.

Steve Hill
Director

AMENDATORY SECTION (Amending WSR 09-01-021, filed 12/8/08, effective 1/8/09)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCWs and WACs.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.-802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1. August 31 would be the earliest Kim could return

to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into an investment account in which tax is deferred until funds are withdrawn. The benefit is based on the contribution rate and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **Gainsharing** is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(21) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(22) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(23) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(24) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(25) **Participant** means an eligible employee who participates in a deferred compensation or dependent care assistance plan.

(26) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation or dependent care assistance plan.

(27) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(28) **PERS** means the Washington public ~~(employee's)~~ employees' retirement system created by chapter 41.40 RCW.

(29) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(30) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(31) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(32) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(33) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

(34) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((34))~~ (35) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((35))~~ (36) **Public record** is defined in RCW 42.17.020(41).

~~((36))~~ (37) **Restoration** is the process of restoring a member's service credit for prior periods.

~~((37))~~ (38) **Retirement system employer - see "employer."**

~~((38))~~ (39) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((39))~~ (40) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

~~((40))~~ (41) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((41))~~ (42) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((42))~~ **(43) Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((43))~~ **(44) Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((44))~~ **(45) Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

~~((45))~~ **(46) TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((46))~~ **(47) The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((47))~~ **(48) WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

NEW SECTION

WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) Basic Internal Revenue Code (IRC) section 415 limitations. Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415. This rule applies retroactively beginning on January 1, 2009, except as otherwise stated.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415(b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to the after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415(b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is

other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefits as follows:

(a) For a benefit paid in a form to which IRC section 417(e)(3) does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417(e)(3) applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(3) (the thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(6) Benefits not taken into account for IRC section 415(b) limit. For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

(7) Other adjustments in IRC section 415(b) limitation.

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

(b) In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in (a) of this subsection shall not apply.

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(8) Less than ten years of service adjustment for IRC section 415(b) limitation. The maximum retirement benefits payable to any member who has completed less than ten years of service shall be the amount determined under subsection (1) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(9) Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing. Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

(10) Effect of COLA with a lump sum component on IRC section 415(b) testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration COLA increases as required by IRC section 415(b) and applicable treasury regulations.

(11) IRC section 415(c) limit. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation; provided; however, that member contributions picked up under IRC section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that

would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(B) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(iii) Back pay, within the meaning of Treasury Regulation section 1.415 (c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and 414 (u)(2), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(12) Service purchases under IRC section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding (d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(h) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC section 403 (b)(13)(A) or 457 (e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(i) The limitations of (e) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC section 415 (c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

(13) Modification of contributions for IRC sections 415(c) and 415(n) purposes. Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(14) Repayments of cash outs. Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

(15) Participation in other qualified plans: Aggregation of limits.

(a) The IRC section 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC section 414(j) maintained by the member's employer shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The IRC section 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC section 414(i) maintained by the member's employer shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(16) Reduction of benefits priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's defined contribution component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and

the plan administrator for such other plans provided; however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

NEW SECTION

WAC 415-02-750 How does the department comply with Internal Revenue Code distribution rules? (1) All benefits paid from the retirement plan shall be distributed in accordance with a reasonable and good faith interpretation of the requirements of section 401 (a)(9) of the Internal Revenue Code, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of April 1st following the calendar year in which a member attains age seventy and one-half or April 1st of the year following the calendar year in which the member retires;

(b) Unless distributed in a lump sum, the member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and designated beneficiary;

(c) The life expectancy of a member or the member's spouse or beneficiary may not be recalculated after the benefits commence;

(d) If a member dies before the required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year following the calendar year of the member's death; or

(ii) Distributed within five years of the member's death.

(e) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of section 401 (a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation section 1.401 (a)(9)-6, Q&A 2; and

(f) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(2) The retirement system pursuant to a valid dissolution order as defined in RCW 41.50.500 may establish separate benefits for a member and nonmember.

(3) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in section 401 (a)(9)(G) of the Internal Revenue Code and Treasury Regulation section 1.401-1 (b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the plan.

NEW SECTION

WAC 415-02-751 How does the department comply with Internal Revenue Code rollover rules? (1) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the federal Internal Revenue Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the distributee with the following exceptions:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under section 401 (a)(9) of the Internal Revenue Code;

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408 (a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the Internal Revenue Code;

(b) An individual retirement annuity described in section 408(b) of the Internal Revenue Code;

(c) An annuity plan described in section 403(a) of the Internal Revenue Code;

(d) A qualified trust described in section 401(a) of the Internal Revenue Code;

(e) Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code;

(f) Effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state

that agrees to separately account for amounts transferred into such 457(b) plan from this plan; or

(g) Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(4) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401 (a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

NEW SECTION

WAC 415-02-752 How does the department comply with Internal Revenue Code compensation limit rules? (1)

As used in this section, the term "eligible member" means a person who first became a member of the plan prior to the plan year beginning after December 31, 1995. Pursuant to section 13212 (d)(3)(A) of OBRA '93, and the regulations issued under that section, eligible members are not subject to the limits of section 401 (a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the plan for eligible members shall be the maximum amount allowed by the plan to be so used on July 1, 1993. The limits referenced in subsections (2) and (3) of this section apply only to years beginning after December 31, 1995, and only to individuals who first became plan members in plan years beginning on and after January 1, 1996.

(2) Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under section 401 (a)(17)(B) of the Internal Revenue Code) shall be ignored for purposes of computing employee and employer contributions to or benefits due from the plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of section 414 (g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.

(3) Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds two hundred thousand dollars (as adjusted for cost-of-living increases in accordance with section 401 (a)(17)(B) of the Internal Revenue Code) may not be used in determining ben-

efits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is used in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The determination period for testing contributions is the calendar year.

NEW SECTION

WAC 415-02-753 How does the department comply with Internal Revenue Code vesting rules? (1) In addition to protections provided by state law, a plan member shall be one hundred percent vested in all plan benefits upon attainment of the normal retirement age and service requirements.

(2) A plan member shall be one hundred percent vested in his or her accumulated contributions at all times.

(3) The plan may only be terminated by action of the legislature and employer contributions must be paid in accordance with state law. In the event the legislature took action to terminate a plan, in whole or in part, or discontinue employer contributions to the plan, any applicable state law and constitutional protections would apply to accrued benefits. In such event, pursuant to federal rules, a plan member's accrued benefit under the plan in nonforfeitable to the extent funded.

NEW SECTION

WAC 415-02-754 How does the department comply with Internal Revenue Code definitely determinable benefit rules? (1) In conformity with section 401 (a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

(2) In conformity with section 401 (a)(25) of the Internal Revenue Code, actuarial equivalence for purposes of calculating benefit options is determined using the following assumptions and without employer discretion:

Interest rate: Five percent; and

(a) For years prior to January 1, 2009, the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62; or

(b) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code, Notice 2008-85, or any subsequent

Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code.

NEW SECTION

WAC 415-02-755 How does the department comply with Internal Revenue Code USERRA rules? Effective December 12, 1994, notwithstanding any other provisions of state law, contributions, benefits and service credit with respect to qualified military service are governed by section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.

Effective with respect to deaths occurring on and after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of Title 38 of the United States Code), to the extent required by section 401 (a)(37) of the Internal Revenue Code, survivors of a member of a retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified service must be counted for vesting purposes.

NEW SECTION

WAC 415-02-756 How does the department comply with Internal Revenue Code exclusive benefit rules? No assets of the retirement system may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 415-106-050	How does the department comply with Internal Revenue Code distribution rules?
WAC 415-106-060	What are the IRS limitations on maximum benefits and maximum contributions?
WAC 415-106-070	Assets for exclusive benefit of members and beneficiaries.
WAC 415-108-181	How does the department comply with Internal Revenue Code distribution rules?
WAC 415-108-182	What are the IRS limitations on maximum benefits and maximum contributions?
WAC 415-108-183	Assets for exclusive benefit of members and beneficiaries.

- WAC 415-110-050 How does the department comply with Internal Revenue Code distribution rules?
- WAC 415-110-060 What are the IRS limitations on maximum benefits and maximum contributions?
- WAC 415-110-070 Assets for exclusive benefit of members and beneficiaries.
- WAC 415-112-050 How does the department comply with Internal Revenue Code distribution rules?
- WAC 415-112-060 What are the IRS limitations on maximum benefits and maximum contributions?
- WAC 415-112-070 Assets for exclusive benefit of members and beneficiaries.

dards. Chapter 16-302 WAC is also amended to allow only one reinspection for a field producing the foundation class and to clarify that additional field inspections can be requested if the field is producing the registered or certified class of seed.

Additional editorial changes to footnotes are also being made to clearly indicate the data that the footnote pertains to.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-685.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Adopted under notice filed as WSR 10-19-060 on September 14, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 1, 2010.

Dan Newhouse
Director

WSR 10-24-102

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 1, 2010, 8:32 a.m., effective January 1, 2011]

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

Purpose: The rule making order amends chapter 16-302 WAC by modifying current seed certification standards to allow for a minimal amount of triticale seed to be present as a contaminant in the certified class of small grain seed stan-

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

WAC 16-302-685 Small grains standards for seed certification. (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

LAND, ISOLATION, AND FIELD STANDARDS

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	((FIELD STANDARDS))		WILD OAT MAXIMUM PLANTS/ACRE
				OTHER CROP MAXIMUM HEAD RATIO	TRITICALE PLANTS PER ACRE <u>IN BARLEY, WHEAT, AND OAT</u>	
Foundation	2((#)) ^a	90 same genus((**)) ^b 3 different genus	None found	None found((***) ^c	<u>None found</u> ^d	None found
Registered	1((#)) ^a	10 same genus 3 different genus((**)) ^b	1/148,000	1/148,000((***) ^c	<u>None found</u> ^d	5
Certified	1((#)) ^a	10 same genus 3 different genus((**)) ^b	1/49,000	1/49,000((***) ^c	<u>None found</u> ^d	5

((#))^a Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.

((**))^b Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.

((***)^c Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.

^d Only one reinspection is allowed for foundation fields when triticale is found in the first inspection. Additional inspections are allowed if the field is downgraded to the registered or certified class.

(2) Small grains - seed standards:

For CLEARFIELD varieties: For all classes - each lot must pass the CLEARFIELD Confirm test by bioassay or PCR as defined by the trait owner. The CLEARFIELD Confirm test verifies that the seed is resistant to the Imazamox herbicide.

Class	Foundation	Registered	Certified
Pure seed (min.)	98%	98%	98%
Inert (max.)	2%	2%	2%
off-type(((**))) ^a (max.)	None found	2/lb	4/lb
Other small grain(((**))) <u>excluding triticale</u> ^a (max.)	None found	1/lb	2/lb
<u>Triticale allowed in wheat</u> ^f	<u>None found</u>	<u>None found</u>	<u>1/1000 grams</u>
<u>Triticale allowed in oats and barley</u>	<u>None found</u>	<u>None found</u>	<u>1/lb</u>
Other crop(((**))) ^b (max.)	None found	0.03%	0.05%
Weed seed (max.)	0.01%	0.01%	0.03%
Objectionable weed seed(((***))) ^c (max.)	None found	None found	1/lb
Wild oat (max.)	None found	None found	None found (((****))) ^d
Viability(((*****))) ^e (min.)	85%	85%	85%

(((**)))^a The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye (~~or triticale~~) is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.

(((**)))^b Excluding off-type and other small grain. No vetch is allowed in small grain seed.

(((***)))^c Excluding wild oat.

(((****)))^d 1/lb for certified class oat.

(((*****)))^e A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

^f In wheat, the foundation standard is based on a 1000 gram crop exam. The registered standard is based on a 500 gram crop exam. The certified standard is based on a 500 gram crop exam. If one triticale seed is found in 500 grams, a second 500 gram crop exam is required for a total 1000 gram crop exam. No triticale is allowed in the second 500 grams with the total standard of 1 triticale seed per 1000 grams allowed.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams examined except as allowed in footnote ^f of this subsection. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

**WSR 10-24-108
PERMANENT RULES
DEPARTMENT OF ECOLOGY**

[Order 10-08—Filed December 1, 2010, 9:22 a.m., effective January 1, 2011]

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

Purpose: This rule making adopts a mandatory greenhouse gas reporting rule for persons operating:

1. A single facility, source, or site that emits at least 10,000 metric tons of greenhouse gases annually in the state; or

2. A supplier of liquid motor vehicle fuel, special fuel, or aircraft fuel that supplies products equivalent to at least 10,000 metric tons of carbon dioxide annually in the state.

This rule making will establish new chapter 173-441 WAC, Reporting of emissions of greenhouse gases.

Statutory Authority for Adoption: Chapter 146, Laws of 2010 (SSB 6373), Greenhouse gas emissions, chapters 70.235 and 70.94 RCW.

Adopted under notice filed as WSR 10-18-047 on August 26, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- Updated chapter 173-441 WAC to incorporate changes to 40 C.F.R. Part 98 made after Washington's proposed rule was drafted. This is consistent with chapters 70.94 and 70.235 RCW and was described as a possibility on WSR 10-18-047.
- Deleted option to combine biomass emissions with nonbiomass emissions for units using methodologies in 40 C.F.R. Part 75 from WAC 173-441-050 (3)(d)(ii) and (iii)(A) due to conflicts with RCW 70.94.151 (5)(a)(i).
- Allowed more time for reporters to pay the reporting fee.
- Provided more options for source categories that do not have a final protocol in 40 C.F.R. Part 98.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 17, 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: December 1, 2010.

Ted Sturdevant
Director

Chapter 173-441 WAC

REPORTING OF EMISSIONS OF GREENHOUSE GASES

NEW SECTION

WAC 173-441-010 Scope. This rule establishes mandatory GHG reporting requirements for owners and operators of certain facilities that directly emit GHG as well as for certain suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel. For suppliers, the GHGs reported are the quantity that would be emitted from the complete combustion or oxidation of the products supplied.

NEW SECTION

WAC 173-441-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) Definitions specific to this chapter:

(a) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(b) "Carbon dioxide equivalents" or "CO₂e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(c) "Department of licensing" or "DOL" means the Washington state department of licensing.

(d) "Director" means the director of the department of ecology.

(e) "Ecology" means the Washington state department of ecology.

(f) "Facility" unless otherwise specified in any subpart of 40 C.F.R. Part 98 as adopted or proposed by December 1, 2010, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(g) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(h) "Person" includes:

(i) An owner or operator, as those terms are defined by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted or proposed by December 1, 2010; and

(ii) A supplier.

(i) "Supplier" means any person who is:

(i) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010;

(ii) A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or

(iii) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(2) **Definitions specific to suppliers.** Suppliers must use the definitions found in the following regulations unless the definition is in conflict with a definition found in subsection (1) of this section. These definitions do not apply to facilities.

(a) WAC 308-72-800;

(b) WAC 308-77-005; and

(c) WAC 308-78-010.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, the definitions found in 40 C.F.R. § 98.6, as adopted or proposed by December 1, 2010, are adopted by reference as modified in WAC 173-441-120(2).

(4) **Definitions from chapter 173-400 WAC.** If no definition is provided in subsections (1) through (3) in this section, use the definition found in chapter 173-400 WAC.

NEW SECTION

WAC 173-441-030 Applicability. The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this chapter apply to the owners and operators of any facility that meets the requirements of subsection (1) of this section; and any supplier that meets the requirements of subsection (2) of this section. In determining whether reporting is required, the requirements of subsection (1) must be applied independently of the requirements of subsection (2).

(1) **Facility reporting.** Reporting is mandatory for an owner or operator of any facility located in Washington state with total GHG emissions that exceeds the reporting threshold defined in (a) of this subsection. GHG emissions from all applicable source categories listed in WAC 173-441-120 at the facility must be included when determining whether emissions from the facility meet the reporting threshold.

(a) **Facility reporting threshold.** Any facility that emits ten thousand metric tons CO₂e or more per calendar year in total GHG emissions from all applicable source categories listed in WAC 173-441-120 exceeds the reporting threshold.

(b) **Calculating facility emissions for comparison to the threshold.** To calculate GHG emissions for comparison to the reporting threshold, the owner or operator must:

(i) Calculate the total annual emissions of each GHG in metric tons from all applicable source categories that are listed and defined in WAC 173-441-120. The GHG emissions must be calculated using the calculation methodologies specified in WAC 173-441-120 and available company records.

(ii) Include emissions of all GHGs that are listed in Table A-1 of WAC 173-441-040, including all GHG emissions from the combustion of biomass and all fugitive releases of GHG emissions from biomass, calculated as provided in the calculation methods referenced in Table 120-1.

(iii) Sum the emissions estimates for each GHG and calculate metric tons of CO₂e using Equation A-1 of this subsection.

$$CO_2e = \sum_{i=1}^n GHG_i \times GWP_i \quad (Eq. A - 1)$$

Where:

- CO₂e = Carbon dioxide equivalent, metric tons/year.
- GHG_i = Mass emissions of each greenhouse gas listed in Table A-1 of WAC 173-441-040, metric tons/year.
- GWP_i = Global warming potential for each greenhouse gas from Table A-1 of WAC 173-441-040.
- n = The number of greenhouse gases emitted.

(iv) Include in the emissions calculation any CO₂ that is captured for transfer off-site.

(v) Research and development activities are not considered to be part of any source category defined in this chapter.

(2) **Suppliers.** Reporting is mandatory for any supplier required to file periodic tax reports to DOL and has total carbon dioxide emissions that exceed the reporting threshold defined in (a) of this subsection.

(a) **Supplier reporting threshold.** Any supplier that supplies applicable fuels that are reported to DOL as sold in Washington state of which the complete combustion or oxidation would result in total calendar year emissions of ten thousand metric tons or more of carbon dioxide exceeds the reporting threshold.

(b) **Calculating supplier emissions for comparison to the threshold.** To calculate CO₂ emissions for comparison to the reporting threshold, a supplier must:

(i) Base its emissions on the applicable fuel quantities as established in WAC 173-441-130(1) and reported to DOL. A supplier must apply the mass in metric tons per year of CO₂ that would result from the complete combustion or oxidation of these fuels towards the reporting threshold.

(ii) Calculate the total annual carbon dioxide emissions in metric tons from all applicable fuel quantities and fuel types as established in WAC 173-441-130(1) and reported to DOL. The CO₂ emissions must be calculated using the calculation methodologies specified in WAC 173-441-130 and data reported to DOL.

(iii) Only include emissions of carbon dioxide associated with the complete combustion or oxidation of the applicable fuels. Include all CO₂ emissions from the combustion of biomass fuels.

(iv) Research and development activities are not considered to be part of any source category defined in this chapter.

(3) **Applicability over time.** A person that does not meet the applicability requirements of either subsection (1) or (2) of this section is not subject to this rule. Such a person would become subject to the rule and the reporting requirements of this chapter if they exceed the applicability requirements of subsection (1) or (2) of this section at a later time. Thus, persons should reevaluate the applicability to this chapter (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of subsection (1) or (2) of this section. Such changes include, but are not limited to, process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, facility expansion, and changes to this chapter.

(4) **Voluntary reporting.** A person may choose to voluntarily report to ecology GHG emissions that are not required to be reported under subsection (1) or (2) of this section. Persons voluntarily reporting GHG emissions must use the methods established in WAC 173-441-120(3) and 173-441-130 to calculate any voluntarily reported GHG emissions.

(5) **Reporting requirements when emissions of greenhouse gases fall below reporting thresholds.** Except as provided in this subsection, once a facility or supplier is subject to the requirements of this chapter, the person must continue for each year thereafter to comply with all requirements of this chapter, including the requirement to submit annual GHG reports, even if the facility or supplier does not meet the applicability requirements in subsection (1) or (2) of this section in a future year.

(a) If reported emissions are less than ten thousand metric tons CO₂e per year for five consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31st of the year immediately following the fifth consecutive year of emissions less than ten thousand tons CO₂e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the five consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(b) If reported emissions are less than five thousand metric tons CO₂e per year for three consecutive years, then the

person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31st of the year immediately following the third consecutive year of emissions less than five thousand tons CO₂e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(c) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and operations listed in WAC 173-441-120 and 173-441-130 cease to operate, then the person is exempt from reporting in the years following the year in which cessation of such operations

occurs, provided that the person submits a notification to ecology that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations. This provision does not apply to seasonal or other temporary cessation of operations. This provision does not apply to facilities with municipal solid waste landfills. The person must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

NEW SECTION

WAC 173-441-040 Greenhouse gases. (1) **Greenhouse gases.** Table A-1 of this section lists the GHGs regulated under this chapter and their global warming potentials.

(2) **CO₂e conversion.** Use Equation A-1 of WAC 173-441-030 (1)(b)(iii) and the global warming potentials listed in Table A-1 of this section to convert emissions into CO₂e.

**Table A-1:
Global Warming Potentials (100-Year Time Horizon)**

Name	CAS No.	Chemical Formula	Global Warming Potential (100 yr.)
Carbon dioxide	124-38-9	CO ₂	1
Methane	74-82-8	CH ₄	21
Nitrous oxide	10024-97-2	N ₂ O	310
HFC-23	75-46-7	CHF ₃	11,700
HFC-32	75-10-5	CH ₂ F ₂	650
HFC-41	593-53-3	CH ₃ F	150
HFC-125	354-33-6	C ₂ HF ₅	2,800
HFC-134	359-35-3	C ₂ H ₂ F ₄	1,000
HFC-134a	811-97-2	CH ₂ FCF ₃	1,300
HFC-143	430-66-0	C ₂ H ₃ F ₃	300
HFC-143a	420-46-2	C ₂ H ₃ F ₃	3,800
HFC-152	624-72-6	CH ₂ FCH ₂ F	53
HFC-152a	75-37-6	CH ₃ CHF ₂	140
HFC-161	353-36-6	CH ₃ CH ₂ F	12
HFC-227ea	431-89-0	C ₃ HF ₇	2,900
HFC-236cb	677-56-5	CH ₂ FCF ₂ CF ₃	1,340
HFC-236ea	431-63-0	CHF ₂ CHFCF ₃	1,370
HFC-236fa	690-39-1	C ₃ H ₂ F ₆	6,300
HFC-245ca	679-86-7	C ₃ H ₃ F ₅	560
HFC-245fa	460-73-1	CHF ₂ CH ₂ CF ₃	1,030
HFC-365mfc	406-58-6	CH ₃ CF ₂ CH ₂ CF ₃	794
HFC-43-10mee	138495-42-8	CF ₃ CFHCFHCF ₂ CF ₃	1,300
All other HFCs	NA	NA	Contact ecology
Sulfur hexafluoride	2551-62-4	SF ₆	23,900
Trifluoromethyl sulphur pentafluoride	373-80-8	SF ₅ CF ₃	17,700
Nitrogen trifluoride	7783-54-2	NF ₃	17,200
PFC-14 (Perfluoromethane)	75-73-0	CF ₄	6,500

Name	CAS No.	Chemical Formula	Global Warming Potential (100 yr.)
PFC-116 (Perfluoroethane)	76-16-4	C ₂ F ₆	9,200
PFC-218 (Perfluoropropane)	76-19-7	C ₃ F ₈	7,000
Perfluorocyclopropane	931-91-9	C-C ₃ F ₆	17,340
PFC-3-1-10 (Perfluorobutane)	355-25-9	C ₄ F ₁₀	7,000
Perfluorocyclobutane	115-25-3	C-C ₄ F ₈	8,700
PFC-4-1-12 (Perfluoropentane)	678-26-2	C ₅ F ₁₂	7,500
PFC-5-1-14 (Perfluorohexane)	355-42-0	C ₆ F ₁₄	7,400
PFC-9-1-18	306-94-5	C ₁₀ F ₁₈	7,500
All other PFCs	NA	NA	Contact ecology
HCFE-235da2 (Isoflurane)	26675-46-7	CHF ₂ OCHClCF ₃	350
HFE-43-10pccc (H-Galden 1040x)	E1730133	CHF ₂ OCF ₂ OC ₂ F ₄ OCHF ₂	1,870
HFE-125	3822-68-2	CHF ₂ OCF ₃	14,900
HFE-134	1691-17-4	CHF ₂ OCHF ₂	6,320
HFE-143a	421-14-7	CH ₃ OCF ₃	756
HFE-227ea	2356-62-9	CF ₃ CHFOCF ₃	1,540
HFE-236ca12 (HG-10)	78522-47-1	CHF ₂ OCF ₂ OCHF ₂	2,800
HFE-236ea2 (Desflurane)	57041-67-5	CHF ₂ OCHF ₂ CF ₃	989
HFE-236fa	20193-67-3	CF ₃ CH ₂ OCF ₃	487
HFE-245cb2	22410-44-2	CH ₃ OCF ₂ CF ₃	708
HFE-245fa1	84011-15-4	CHF ₂ CH ₂ OCF ₃	286
HFE-245fa2	1885-48-9	CHF ₂ OCH ₂ CF ₃	659
HFE-254cb2	425-88-7	CH ₃ OCF ₂ CHF ₂	359
HFE-263fb2	460-43-5	CF ₃ CH ₂ OCH ₃	11
HFE-329mcc2	67490-36-2	CF ₃ CF ₂ OCF ₂ CHF ₂	919
HFE-338mcf2	156053-88-2	CF ₃ CF ₂ OCH ₂ CF ₃	552
HFE-338pcc13 (HG-01)	188690-78-0	CHF ₂ OCF ₂ CF ₂ OCHF ₂	1,500
HFE-347mcc3	28523-86-6	CH ₃ OCF ₂ CF ₂ CF ₃	575
HFE-347mcf2	E1730135	CF ₃ CF ₂ OCH ₂ CHF ₂	374
HFE-347pcf2	406-78-0	CHF ₂ CF ₂ OCH ₂ CF ₃	580
HFE-356mec3	382-34-3	CH ₃ OCF ₂ CHF ₂ CF ₃	101
HFE-356pcc3	160620-20-2	CH ₃ OCF ₂ CF ₂ CHF ₂	110
HFE-356pcf2	E1730137	CHF ₂ CH ₂ OCF ₂ CHF ₂	265
HFE-356pcf3	35042-99-0	CHF ₂ OCH ₂ CF ₂ CHF ₂	502
HFE-365mcf3	378-16-5	CF ₃ CF ₂ CH ₂ OCH ₃	11
HFE-374pc2	512-51-6	CH ₃ CH ₂ OCF ₂ CHF ₂	557
HFE-449sl (HFE-7100) Chemical blend	163702-07-6 163702-08-7	C ₄ F ₉ OCH ₃ (CF ₃) ₂ CFCF ₂ OCH ₃	297
HFE-569sf2 (HFE-7200) Chemical blend	163702-05-4 163702-06-5	C ₄ F ₉ OC ₂ H ₅ (CF ₃) ₂ CFCF ₂ OC ₂ H ₅	59
Sevoflurane	28523-86-6	CH ₂ FOCH(CF ₃) ₂	345
HFE-356mm1	13171-18-1	(CF ₃) ₂ CHOCH ₃	27
HFE-338mmz1	26103-08-2	CHF ₂ OCH(CF ₃) ₂	380
(Octafluorotetramethy-lene) hydroxymethyl group	NA	X-(CF ₂) ₄ CH(OH)-X	73

Name	CAS No.	Chemical Formula	Global Warming Potential (100 yr.)
HFE-347mmy1	22052-84-2	CH ₃ OCF(CF ₃) ₂	343
Bis(trifluoromethyl)-methanol	920-66-1	(CF ₃) ₂ CHOH	195
2,2,3,3,3-pentafluoropropanol	422-05-9	CF ₃ CF ₂ CH ₂ OH	42
PFPMIE	NA	CF ₃ OCF(CF ₃)CF ₂ OCF ₂ OCF ₃	10,300

NA = not available.

NEW SECTION

WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements. Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year.

(ii) A person not required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than October 31st of each calendar year for GHG emissions in the previous calendar year.

(b) Reporting requirements begin:

(i) For an existing facility or supplier that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new facility or supplier that begins operation on or after January 1, 2012, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Facilities begin reporting with the first month of the change and ending on December 31st of that year. For a facility that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold.

(B) Suppliers begin reporting January 1st and ending on December 31st the year of the change.

(C) For both facilities and suppliers, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

number of hours in the year that a missing data procedure was

(3) **Content of the annual report.** Each annual GHG report shall contain the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) as follows:

(i) Annual emissions (including biogenic CO₂) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO₂e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO₂ aggregated for all applicable source categories in WAC 173-441-120 in metric tons. (iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in subsections (3)(d)(iii)(A) through (E) of this section.

(A) Biogenic CO₂.

(B) CO₂ (including biogenic CO₂).

(C) CH₄.

(D) N₂O.

(E) Each fluorinated GHG.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(e) For suppliers, report the following information:

(i) Annual emissions of CO₂, expressed in metric tons of CO₂, as required in subsections (3)(e)(i)(A) and (B) of this section that would be emitted from the complete combustion or oxidation of the fuels reported to DOL as sold in Washington state during the calendar year.

(A) Aggregate biogenic CO₂.

(B) Aggregate CO₂ (including nonbiogenic and biogenic CO₂).

(ii) All contact information reported to DOL not included in (a) of this subsection.

(f) A written explanation, as required under subsection (4) of this section, if you change emission calculation methodologies during the reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120 and the total number used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the reporting entity.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the reporting entity's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the reporting entity. A reporting entity that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the reporting entity that are not related to the principal source of revenue. If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the reporting entity and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions:

(i) If the reporting entity is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report one hundred percent ownership.

(ii) If the reporting entity is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report one hundred percent ownership.

(iii) If the reporting entity is owned by more than one United States company (e.g., company A owns forty percent, company B owns thirty-five percent, and company C owns twenty-five percent), provide the legal names and physical addresses of all the companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the reporting entity is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report one hundred percent ownership by the joint venture or cooperative.

(v) If the reporting entity is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report one hundred percent ownership.

(vi) If the reporting entity is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the reporting entity is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports.

(6) **Recordkeeping.** A person that reports GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least three years. The records shall be kept in an electronic or hard copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by ecology, the records required under this section must be made available to ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by ecology, electronic records shall be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030(1) must keep a written GHG monitoring plan.

(i) At a minimum, the GHG monitoring plan shall include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator shall revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator shall make all information that is collected in conformance with the GHG monitoring plan available for review during an audit. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers must retain any other data specified in WAC 173-441-130(5).

(7) Annual GHG report revisions.

(a) A person shall submit a revised annual GHG report within forty-five days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive error. The person shall, within forty-five days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the forty-five day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the forty-five day period, by e-mail to an address prescribed by ecology, at least two business days prior to the expiration of the forty-five day period, and ecology does not respond to the

request by the end of such period, the extension request is deemed to be automatically granted for thirty more days. During the automatic thirty-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator shall retain documentation for three years to support any revision made to an annual GHG report.

(8) Calibration and accuracy requirements. The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75 to calculate CO₂ mass emissions. Suppliers subject to the requirements of this chapter must meet the calibration accuracy requirements in chapters 308-72, 308-77, and 308-78 WAC.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, shall be calibrated prior to January 1, 2012, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters shall meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g., weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations, shall also be calibrated prior to January 1, 2012; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices shall be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard including, but not limited to, industry standards and manufacturer's specifications. The procedures and methods used to quality-assure the data from each measurement device shall be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used shall be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For facilities and suppliers that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant

subsection(s) of this chapter to provide data for the GHG emissions calculations shall be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) shall be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection shall be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A-2 of this subsection. The terms "R" and "A" in Equation A-2 must be expressed in consistent units of measure (e.g., gallons/minute, ft³/min). The calibration error at each measurement point shall not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \quad (\text{Eq. A-2})$$

Where:

- CE = Calibration error (%)
- R = Reference value
- A = Flow meter response to the reference value

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A-3 of this subsection. The terms "R", "A", and "FS" in Equation A-3 of this subsection must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point shall not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

$$CE = \frac{|R-A|}{FS} \times 100 \quad (\text{Eq. A-3})$$

Where:

- CE = Calibration error (%)
- R = Reference value
- A = Transmitter response to the reference value

FS = Full-scale value of the transmitter

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using an industry consensus standards or a manufacturer's specification.

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written monitoring plan under subsection (6)(e)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You shall then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You shall periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the monitoring plan and recordkeeping provisions of subsections (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company.

Meters used exclusively to measure the flow rates of fuels that are used for unit startup or ignition are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter shall be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements shall be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter shall be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You shall follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) as adopted or proposed by December 1, 2010, are adopted by reference as modified in WAC 173-441-120(2).

NEW SECTION

WAC 173-441-060 Authorization and responsibilities of the designated representative. (1) **General.** Except as provided under subsection (6) of this section, each facility, and each supplier, that is subject to this chapter, shall have one and only one designated representative, who shall be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to ecology under this chapter. If the facility is required to submit an emission report to EPA under 40 C.F.R. Part 98, the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports to EPA shall be the designated representative responsible for certifying, signing, and submitting GHG emissions reports to ecology under this chapter.

(2) **Authorization of a designated representative.** The designated representative of the facility or supplier shall be an individual selected by an agreement binding on the owners and operators of such facility or supplier and shall act in

accordance with the certification statement in subsection (9)(d)(iv) of this section.

(3) **Responsibility of the designated representative.** Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this chapter, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the designated representative by ecology, pollution control hearings board, or a court.

(4) **Timing.** No GHG emissions report or other submissions under this chapter for a facility or supplier will be accepted until ecology has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation shall be submitted at least sixty days before the deadline for submission of the facility's or supplier's initial emission report under this chapter.

(5) **Certification of the GHG emissions report.** Each GHG emission report and any other submission under this chapter for a facility or supplier shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and 40 C.F.R. § 3.10 as adopted on October 13, 2005.

(a) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) Ecology will accept a GHG emission report or other submission for a facility or supplier under this chapter only if the submission is certified, signed, and submitted in accordance with this section.

(6) **Alternate designated representative.** A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(a) Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative:

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative.

(b) Except in this section, whenever the term "designated representative" is used in this chapter, the term shall be construed to include the designated representative or any alternate designated representative.

(7) Changing a designated representative or alternate designated representative. The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by ecology may be changed at any time upon receipt by ecology of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when ecology receives such later signed certificate of representation shall be binding on the new designated representative and the owners and operators of the facility or supplier.

(8) Changes in owners and operators. In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within ninety days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative shall submit, within ninety days of making such determination, a certificate of representation that is complete under this section except that such list shall be amended to include such owner or operator.

(9) Certificate of representation. A certificate of representation shall be complete if it includes the following elements in a format prescribed by ecology in accordance with this section:

(a) Identification of the facility or supplier for which the certificate of representation is submitted.

(b) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(c) A list of the owners and operators of the facility or supplier identified in (a) of this subsection, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners shall not make the certificate of representation incomplete.

(d) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or binding on the supplier, as applicable."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under chapter 173-441 WAC on behalf of the owners and operators of the facility and on behalf of suppliers, as applicable, and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the supplier or owners and operators of the facility, as applicable, shall be bound by any order issued to me by ecology, the pollution control hearings board, or a court regarding the facility or supplier."

(iv) "If there are multiple owners and operators of the facility or multiple suppliers, as applicable, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and each supplier."

(e) The signature of the designated representative and any alternate designated representative and the dates signed.

(10) Documents of agreement. Unless otherwise required by ecology, documents of agreement referred to in the certificate of representation shall not be submitted to ecology. Ecology shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(11) Binding nature of the certificate of representation. Once a complete certificate of representation under this section for a facility or supplier has been received, ecology will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by ecology.

(12) Objections concerning a designated representative.

(a) Except as provided in subsection (7) of this section, no objection or other communication submitted to ecology concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by ecology under this chapter.

(b) Ecology will not adjudicate any private legal dispute concerning the authorization or any representation, action,

inaction, or submission of any designated representative or alternate designated representative.

(13) Delegation by designated representative and alternate designated representative.

(a) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology provided for or required under this chapter, except for a submission under this subsection.

(b) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology in accordance with (a) of this subsection, the designated representative or alternate designated representative must submit electronically to ecology a notice of delegation, in a format prescribed by ecology, that includes the following elements:

(i) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an "agent").

(iii) For each such individual, a list of the type or types of electronic submissions under (a) of this subsection for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with subsection (13)(b)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) "I agree that any electronic submission to ecology that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under WAC 173-441-060 (13)(c) shall be deemed to be an electronic submission certified, signed, and submitted by me."

(B) "Until this notice of delegation is superseded by a later signed notice of delegation under WAC 173-441-060 (13)(c), I agree to maintain an e-mail account and to notify

ecology immediately of any change in my e-mail address unless all delegation of authority by me under WAC 173-441-060(13) is terminated."

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(c) A notice of delegation submitted in accordance with (b) of this subsection shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by ecology and until receipt by ecology of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification in (b)(v)(A) of this subsection and made in accordance with a notice of delegation effective under (c) of this subsection shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

NEW SECTION

WAC 173-441-070 Report submittal. Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.

NEW SECTION

WAC 173-441-080 Standardized methods and conversion factors incorporated by reference. (1) The materials incorporated by reference by EPA in 40 C.F.R. § 98.7, as adopted or proposed by December 1, 2010, are incorporated by reference in this chapter for use in the sections of this chapter that correspond to the sections of 40 C.F.R. Part 98 referenced here.

(2) Table A-2 of this section provides a conversion table for some of the common units of measure used in this chapter.

**Table A-2:
Units of Measure Conversions**

To convert from	To	Multiply by
Kilograms (kg)	Pounds (lbs)	2.20462
Pounds (lbs)	Kilograms (kg)	0.45359
Pounds (lbs)	Metric tons	4.53592 x 10 ⁻⁴
Short tons	Pounds (lbs)	2,000
Short tons	Metric tons	0.90718
Metric tons	Short tons	1.10231
Metric tons	Kilograms (kg)	1,000
Cubic meters (m ³)	Cubic feet (ft ³)	35.31467
Cubic feet (ft ³)	Cubic meters (m ³)	0.028317

To convert from	To	Multiply by
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m ³)	0.15891
Cubic meters (m ³)	Barrels of liquid fuel (bbl)	6.289
Barrels of liquid fuel (bbl)	Gallons (liquid, US)	42
Gallons (liquid, US)	Barrels of liquid fuel (bbl)	0.023810
Gallons (liquid, US)	Cubic meters (m ³)	0.0037854
Liters (l)	Cubic meters (m ³)	0.001
Feet (ft)	Meters (m)	0.3048
Meters (m)	Feet (ft)	3.28084
Miles (mi)	Kilometers (km)	1.60934
Kilometers (km)	Miles (mi)	0.62137
Square feet (ft ²)	Acres	2.29568 x 10 ⁻⁵
Square meters (m ²)	Acres	2.47105 x 10 ⁻⁴
Square miles (mi ²)	Square kilometers (km ²)	2.58999
Degrees Celsius (°C)	Degrees Fahrenheit (°F)	°C = (5/9) x (°F - 32)
Degrees Fahrenheit (°F)	Degrees Celsius (°C)	°F = (9/5) x (°C + 32)
Degrees Celsius (°C)	Kelvin (K)	K = °C + 273.15
Kelvin (K)	Degrees Rankine (°R)	1.8
Joules	Btu	9.47817 x 10 ⁻⁴
Btu	MMBtu	1 x 10 ⁻⁶
Pascals (Pa)	Inches of mercury (in Hg)	2.95334 x 10 ⁻⁴
Inches of mercury (in Hg)	Pounds per square inch (psi)	0.49110
Pounds per square inch (psi)	Inches of mercury (in Hg)	2.03625

NEW SECTION

WAC 173-441-090 Compliance and enforcement. (1) **Violations.** Any violation of any requirement of this chapter shall be a violation of chapter 70.94 RCW and subject to enforcement as provided in that chapter. A violation includes but is not limited to failure to report GHG emissions by the reporting deadline, failure to report accurately, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, failure to calculate GHG emissions following the methodologies specified in this chapter, and failure to pay the required reporting fee. Each day of a violation constitutes a separate violation.

(2) **Enforcement responsibility.** Ecology shall enforce the requirements of this chapter unless ecology approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction.

NEW SECTION

WAC 173-441-100 Addresses. All requests, notifications, and communications to ecology pursuant to this chapter, other than submittal of the annual GHG report, shall be submitted to the following address: Greenhouse Gas Report, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

NEW SECTION

WAC 173-441-110 Fees. (1) **Fee determination.** All persons required to report or voluntarily reporting under WAC 173-441-030 must pay a reporting fee for each year they submit a report to ecology. Ecology must establish reporting fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the GHG emissions reporting program.

(2) **Fee eligible activities.** All costs of activities associated with administering this reporting program, as described in RCW 70.94.151(2), are fee eligible.

(3) **Workload analysis and budget development.** Each biennium, ecology must conduct a workload analysis and develop a budget based on the process outlined below:

(a) Ecology must conduct a workload analysis projecting resource requirements for administering the reporting program, organized by categories of fee eligible activities, for the purpose of preparing the budget. Ecology must prepare the workload analysis for the two-year period corresponding to each biennium. The workload analysis must identify the fee eligible administrative activities related to the reporting program that it will perform during the biennium and must estimate the resources required to perform these activities.

(b) Ecology must prepare a budget for administering the reporting program for the two-year period corresponding to each biennium. Ecology must base the budget on the resource requirements identified in the workload analysis for

the biennium and must take into account the reporting program account balance at the start of the biennium.

(4) **Allocation methodology.** Ecology must allocate the reporting program budget among the persons required to report or voluntarily reporting under WAC 173-441-030 according to the following components:

(a) The reporting fee for an owner or operator of a facility required to report or voluntarily reporting under WAC 173-441-030 is calculated by the equal division of seventy-five percent of the budget amount by the total number of facilities reporting GHG emissions under this chapter in a given calendar year. A person required to report or voluntarily reporting multiple facilities under WAC 173-441-030 must pay a fee for each facility reported.

(b) The reporting fee for a supplier required to report or voluntarily reporting under WAC 173-441-030 is calculated by the equal division of twenty-five percent of the budget amount by the total number of suppliers reporting GHG emissions under this chapter in a given calendar year.

(c) A person required to report or voluntarily reporting under WAC 173-441-030 both as an owner or operator of a facility or facilities and as a supplier must pay a fee for each facility reported and a fee for reporting as a supplier.

(5) **Fee schedule.** Ecology must issue annually a fee schedule reflecting the reporting fee to be paid per facility or supplier. Ecology must base the fee schedule on the budget and workload analysis described above and conducted each biennium. Ecology must publish the fee schedule for the following year on or before October 31st of each year.

(6) **Fee payments.** Fees specified in this section must be paid within sixty days of receipt of ecology's billing statement. All fees collected under this chapter must be made payable to the Washington department of ecology. A late fee

surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee received after ninety days past the due date for fee payment.

(7) **Dedicated account.** Ecology must deposit all reporting fees they collect in the air pollution control account.

NEW SECTION

WAC 173-441-120 Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities. Owners and operators of facilities that are subject to this chapter must follow the requirements of this chapter and all subparts of 40 C.F.R. Part 98 listed in Table 120-1 of this section. If a conflict exists between a provision in WAC 173-441-050(3) through 173-441-080 and any applicable provision of this section, the requirements of this section shall take precedence.

(1) **Source categories and calculation methods for facilities.** An owner or operator of a facility subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable source categories in Washington state listed in Table 120-1 of this section using the methods incorporated by reference in Table 120-1. Table 120-1 and subsection (2) of this section list modifications and exceptions to calculation methods adopted by reference in this section. CO₂ collected and transferred off-site must be included in the emissions calculation as required under WAC 173-441-030 (1)(b)(iv) using the methods established in 40 C.F.R. Part 98 Subpart PP as adopted or proposed by December 1, 2010. Owners or operators are not required to comply with requirements in Subpart PP that do not address CO₂ collected and transferred off-site.

**Table 120-1:
Source Categories and Calculation Methods
Incorporated by Reference from 40 C.F.R. Part 98 for Facilities**

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria ⁺
General Stationary Fuel Combustion Sources	C	
Electricity Generation	D	
Adipic Acid Production	E	
Aluminum Production	F	
Ammonia Manufacturing	G	
Cement Production	H	
Electronics Manufacturing	I	In § 98.91, replace "To calculate total annual GHG emissions for comparison to the 25,000 metric ton CO ₂ e per year emission threshold in paragraph § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Ferroalloy Production	K	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria ⁺
Fluorinated Gas Production	L	In § 98.121, replace "To calculate GHG emissions for comparison to the 25,000 metric ton CO ₂ e per year emission threshold in § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Glass Production	N	
HCFC-22 Production and HFC-23 Destruction	O	
Hydrogen Production	P	
Iron and Steel Production	Q	
Lead Production	R	
Lime Manufacturing	S	
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	
Petroleum and Natural Gas Systems	W	§ 98.231(a) should read: "You must report GHG emissions under this subpart if your facility contains petroleum and natural gas systems and the facility meets the requirements of WAC 173-441-030(1)."
Petrochemical Production	X	
Petroleum Refineries	Y	
Phosphoric Acid Production	Z	
Pulp and Paper Manufacturing	AA	
Silicon Carbide Production	BB	
Soda Ash Manufacturing	CC	
Use of Electrical Transmission and Distribution Equipment Use	DD	§ 98.301 should read: "You must report GHG emissions under this subpart if your facility contains any use of electrical transmission and distribution equipment use process and the facility meets the requirements of WAC 173-441-030(1)."
Titanium Dioxide Production	EE	
Underground Coal Mines	FF	
Zinc Production	GG	
Municipal Solid Waste Landfills	HH	CO ₂ from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Industrial Wastewater Treatment	II	CO ₂ from combustion of wastewater biogas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Manure Management	JJ	See subsection (2)(e) of this section.
Suppliers of Carbon Dioxide	PP	Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030 (1)(b)(iv).
Carbon Dioxide Injection and Geologic Sequestration	RR**	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria ⁺
Electrical Equipment Manufacture or Refurbishment	SS	§ 98.451 should read: "You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing or refurbishing process and the facility meets the requirements of WAC 173-441-030(1)."
Industrial Waste Landfills	TT	CO ₂ from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted or proposed by December 1, 2010.
 ** From 40 C.F.R. Part 98, as proposed on April 12, 2010.
 + Modifications and exceptions in subsection (2) of this section and WAC 173-441-173-010 through 173-441-050(2) also apply.

(2) Modifications and exceptions to calculation methods adopted by reference. Except as otherwise specifically provided:

(a) Wherever the term "administrator" is used in the rules incorporated by reference in this chapter, the term "director" shall be substituted.

(b) Wherever the term "EPA" is used in the rules incorporated by reference in this chapter, the term "ecology" shall be substituted.

(c) Wherever the term "United States" is used in the rules incorporated by reference in this chapter, the term "Washington state" shall be substituted.

(d) Wherever a calculation method adopted by reference in Table 120-1 of this section refers to another subpart or paragraph of 40 C.F.R. Part 98:

(i) If Table 120-2 of this section lists the reference, then replace the reference with the corresponding reference to this chapter as specified in Table 120-2.

(ii) If the reference is to a subpart or subsection of a reference listed in Table 120-2 of this section, then replace the reference with the appropriate subsection of the corresponding reference to this chapter as specified in Table 120-2.

(iii) If the reference is to a subpart or paragraph of 40 C.F.R. Part 98 Subparts C through TT incorporated by reference in Table 120-1, then use the existing reference except as modified by this chapter.

(e) For manure management, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.360 as adopted or proposed by December 1, 2010.

(i) 40 C.F.R. § 98.360(a): This source category consists of livestock facilities with manure management systems.

(A) § 98.360 (a)(1) is not adopted by reference.

(B) § 98.360 (a)(2) is not adopted by reference.

(ii) 40 C.F.R. § 98.360(b): A manure management system (MMS) is a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including, but not limited to, ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without litter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.

(iii) 40 C.F.R. § 98.360(c): This source category does not include system components at a livestock facility that are

unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities or any method of manure utilization that is not listed in § 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii).

(iv) 40 C.F.R. § 98.360(d): This source category does not include manure management activities located off-site from a livestock facility or off-site manure composting operations.

(v) 40 C.F.R. § 98.361: Livestock facilities must report GHG emissions under this subpart if the facility contains a manure management system as defined in 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii), and meets the requirements of WAC 173-441-030(1).

(vi) 40 C.F.R. § 98.362 (b) and (c) are not adopted by reference.

(vii) 40 C.F.R. § 98.362(a), 40 C.F.R. § 98.363 through 40 C.F.R. § 98.368, Equations JJ-2 through JJ-15, and Tables JJ-2 through JJ-7 as adopted or proposed by December 1, 2010, remain unchanged unless otherwise modified in this chapter.

(viii) CO₂ from combustion of gas from manure management must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

(f) Use the following method to obtain specific version or date references for any reference in 40 C.F.R. Part 98 that refers to any document not contained in 40 C.F.R. Part 98:

(i) If the reference in 40 C.F.R. Part 98 includes a specific version or date reference, then use the version or date as specified in 40 C.F.R. Part 98.

(ii) If the reference in 40 C.F.R. Part 98 does not include a specific version or date reference, then use the version of the referenced document as available on the date of adoption of this chapter.

**Table 120-2:
Corresponding References in 40 C.F.R. Part 98 and
Chapter 173-441 WAC**

Reference in 40 C.F.R. Part 98	Corresponding Reference in Chapter 173-441 WAC
40 C.F.R. Part 98 or "part"	Chapter 173-441 WAC
Subpart A	WAC 173-441-010 through 173-441-100
§ 98.1	WAC 173-441-010
§ 98.2	WAC 173-441-030
§ 98.2(a)	WAC 173-441-030(1)
§ 98.2(a)(1)	WAC 173-441-030(1)
§ 98.2(a)(2)	WAC 173-441-030(1)
§ 98.2(a)(3)	WAC 173-441-030(1)
§ 98.2(a)(4)	WAC 173-441-030(1)
§ 98.2(i)	WAC 173-441-030(5)
§ 98.3	WAC 173-441-050
§ 98.3(c)	WAC 173-441-050(3)
§ 98.3(g)	WAC 173-441-050(6)
§ 98.3(g)(5)	WAC 173-441-050(6)(e)
§ 98.3(i)	WAC 173-441-050(8)
§ 98.3(i)(6)	WAC 173-441-050(8)(f)
§ 98.4	WAC 173-441-060
§ 98.5	WAC 173-441-070
§ 98.6	WAC 173-441-020
§ 98.7	WAC 173-441-080
§ 98.8	WAC 173-441-090
§ 98.9	WAC 173-441-100
Table A-1 to Subpart A of Part 98—Global Warming Potentials	Table A-1 of WAC 173-441-040
Table A-2 to Subpart A of Part 98—Units of Measure Conversions	Table A-2 of WAC 173-441-080

(3) **Calculation methods for voluntary reporting.** GHG emissions reported voluntarily under WAC 173-441-030(4) must be calculated using the following methods:

(a) If the GHG emissions have calculation methods specified in Table 120-1 of this section, use the methods specified in Table 120-1.

(b) If the GHG emissions have calculation methods specified in WAC 173-441-130, use the methods specified in WAC 173-441-130.

(c) For all GHG emissions from facilities not covered in Table 120-1 of this section or persons supplying any product other than those listed in WAC 173-441-130, contact ecology for an appropriate calculation method no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2) or submit a petition for alternative calculation methods according to the requirements of WAC 173-441-140.

(4) **Alternative calculation methods approved by petition.** An owner or operator may petition ecology to use calculation methods other than those specified in Table 120-1 of this section to calculate its facility GHG emissions. Such alternative calculation methods must be approved by ecology

prior to reporting and must meet the requirements of WAC 173-441-140.

NEW SECTION

WAC 173-441-130 Calculation methods for suppliers. Suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel subject to the requirements of this chapter must calculate the CO₂ emissions that would result from the complete combustion or oxidation of each fuel that is reported to DOL as sold in Washington state using the methods in this section.

(1) **Applicable fuels.** Suppliers are responsible for calculating CO₂ emissions from the following applicable fossil fuels and biomass derived fuels:

(a) All taxed liquid motor vehicle fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of motor vehicle fuel sales under chapter 308-72 WAC.

(b) All taxed special fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of special fuel sales under chapter 308-77 WAC.

(c) All taxed and untaxed aircraft fuel supplied to end users that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of aircraft fuel under chapter 308-78 WAC.

(2) Calculating CO₂ emissions separately for each fuel type. CO₂ emissions must be calculated separately for each applicable fuel type using Equation 130-1 of this section. Use Equation 130-2 of this section to separate each blended fuel into pure fuel types prior to calculating emissions using Equation 130-1.

$$CO_{2i} = \text{Fuel Type}_i \times EF_i \quad (\text{Eq. 130 - 1})$$

Where:

CO_{2i} = Annual CO₂ emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)

Fuel Type_i = Annual volume of fuel type "i" supplied by the supplier (gallons).

EF_i = Fuel type-specific CO₂ emission factor (metric tons CO₂ per gallon) found in Table 130-1 of this section.

$$\text{Fuel Type}_i = \text{Fuel}_i \times \%Vol_i \quad (\text{Eq. 130 - 2})$$

Where:

Fuel Type_i = Annual volume of fuel type "i" supplied by the supplier (gallons).

Fuel_i = Annual volume of blended fuel "i" supplied by the supplier (gallons).

%Vol_i = Percent volume of product "i" that is fuel type_i.

(3) **Calculating total CO₂ emissions.** A supplier must calculate total annual CO₂ emissions from all fuels using Equation 130-3 of this section.

$$CO_{2x} = \sum (CO_{2i}) \quad (\text{Eq. 130 - 3})$$

Where:

CO_{2x} = Annual CO₂ emissions that would result from the complete combustion or oxidation of all fuels (metric tons).

CO_{2i} = Annual CO₂ emissions that would result from the complete combustion or oxidation of each fuel type "i" (gallons).

(4) **Monitoring and QA/QC requirements.** Comply with all monitoring and QA/QC requirements under chapters 308-72, 308-77, and 308-78 WAC.

(5) **Data recordkeeping requirements.** In addition to the annual GHG report required by WAC 173-441-050 (6)(c), the following records must be retained by the supplier in accordance with the requirements established in WAC 173-441-050(6):

(a) For each fuel type listed in Table 130-1 of this section, the annual quantity of applicable fuel in gallons of pure fuel supplied in Washington state.

(b) The CO₂ emissions in metric tons that would result from the complete combustion or oxidation of each fuel type for which subsection (5)(a) of this section requires records to be retained, calculated according to subsection (2) of this section.

(c) The sum of biogenic CO₂ emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(d) The sum of nonbiogenic and biogenic CO₂ emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(e) All records required under chapters 308-72, 308-77, and 308-78 WAC in the format required by DOL.

**Table 130-1:
Emission Factors for Applicable Liquid Motor Vehicle
Fuels, Special Fuels, and Aircraft Fuels**

Fuel Type (pure fuel)	Emission Factor (metric tons CO ₂ per gallon)
Gasoline	0.008960
Ethanol (E100)	0.005767
Diesel (B100)	0.010230
Biodiesel	0.009421
Propane	0.005593
Natural gas	0.000055*
Kerosene	0.010150
Jet fuel	0.009750
Aviation gasoline	0.008310

Contact ecology to obtain an emission factor for any applicable fuel type not listed in this table.

*In units of metric tons CO₂ per scf. When using Equation 130-1 of this section, enter fuel in units of scf.

NEW SECTION

WAC 173-441-140 Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions. An owner or operator may petition ecology to use calculation methods other than those specified in WAC 173-441-120 to calculate GHG emissions. Alternative calculation methodologies are not available for GHG emissions covered by a source category adopted by reference in WAC 173-441-130. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition that meets the following conditions before ecology may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2). Such petition must include sufficient information, as

described in (b) of this subsection, for ecology to determine whether the proposed alternative calculation method will provide emissions data sufficient to meet the reporting requirements of RCW 70.94.151. Ecology will notify the owner or operator within thirty days of receipt of a petition of any additional information ecology requires to approve the proposed calculation methods in the petition. If a petition is under review by ecology at the time an annual emissions report is due under WAC 173-441-050(2), the owner or operator must submit the emissions report using the calculation methods approved under this chapter at the time of submittal of the emissions report.

(b) The petition must include, at a minimum, the following information:

(i) Identifying information as specified in WAC 173-441-060 (9)(b) and 173-441-060 (13)(b)(ii) of the designated representative and any agent submitting a petition;

(ii) Identifying information as specified in WAC 173-441-050 (3)(a) of the facility or facilities where the owner or operator proposes to use the alternative calculation method;

(iii) A clear and complete reference to the subparts or sections in EPA's mandatory greenhouse gas reporting regulation that contain the alternative calculation method and the date that EPA adopted the subparts or sections;

(iv) The source categories that will use the alternative calculation method;

(v) The date that the owner or operator intends to start using the alternative calculation method;

(vi) Any other supporting data or information as requested by ecology as described in subsection (2) of this section; and

(vii) The designated representative must sign and date the petition.

(2) **Ecology review of the petition.** Ecology must approve the alternative calculation method before the owner or operator may use it to report GHG emissions. Ecology will issue a determination within sixty days of receiving a complete petition. The alternative calculation method must meet the following conditions:

(a) Except as noted in (b) of this subsection, alternative calculation methods for facilities required to report under WAC 173-441-030(1) must be methods adopted by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation. The alternative calculation method must be more recent than the method for the given source category adopted by reference in WAC 173-441-120.

(b) As of November 9, 2010, the United States Environmental Protection Agency had not adopted a final GHG reporting protocol for carbon dioxide injection and geologic sequestration. Facilities with emissions in this source category that are required to report under WAC 173-441-030(1) may use alternative calculation methods approved by ecology using the criteria established in (c)(ii)(A) and (B) of this subsection until the United States Environmental Protection Agency adopts a final protocol for that source category in 40 C.F.R. Part 98. Beginning January 1st of the first year reporting is required for the source category by the United States Environmental Protection Agency under a final protocol in 40 C.F.R. Part 98, emissions from the source category must

be reported to ecology using either the protocol adopted in Table 120-1 of WAC 173-441-120 or a protocol approved by ecology under (a) of this subsection.

(c) For GHG emissions reported voluntarily under WAC 173-441-030(4), ecology must apply the following criteria when evaluating an alternative calculation method:

(i) If the GHG emissions are covered by a source category adopted by reference in WAC 173-441-120, then the requirements of (a) and (b) of this subsection apply.

(ii) If the GHG emissions are not covered by a source category adopted by reference in WAC 173-441-120 or 173-441-130, then ecology must consider whether the methods meet the following criteria:

(A) The alternative calculation method is established by a nationally or internationally recognized body in the field of GHG emissions reporting such as:

(I) Ecology;

(II) EPA;

(III) The International Panel on Climate Change;

(IV) The Western Climate Initiative;

(V) The Climate Registry;

(B) If an alternative calculation method is not available from sources listed in (c)(ii)(A) of this subsection, then ecology may accept a method from an industry or trade association or devised by the owner or operator if ecology determines the alternative calculation method is consistent with the requirements established under RCW 70.94.151.

(d) For all source categories, including those covered in (a), (b), and (c) of this subsection, the alternative calculation method must be consistent in content and scope with the requirements established under RCW 70.94.151. In the event that a proposed alternative calculation method does not include all required GHG emissions, the owner or operator must use the calculation methods specified in subsection (3) of this section to calculate those emissions.

(3) **Calculating emissions not included in alternative calculation method.** An owner or operator must report all source categories of GHG emissions for which reporting is required under RCW 70.94.151 and for which calculation methods have been established in WAC 173-441-120 or 173-441-130. If an approved alternative calculation method does not include calculation methods for all required source categories of emissions, then the owner or operator must use a method described in WAC 173-441-120, 173-441-130, or approved for the owner or operator by ecology in a separate petition to calculate and report those emissions.

(4) **Appeal of determination.** An approval or denial issued by ecology in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

NEW SECTION

WAC 173-441-150 Confidentiality. (1) Emissions data submitted to ecology under this chapter are public information and must not be designated as confidential.

(2) Any proprietary or confidential information exempt from disclosure when reported to DOL that ecology obtains directly from DOL remains exempt from disclosure.

(3) Information considered confidential by EPA is not considered confidential by ecology unless it also meets the conditions established in subsection (2) or (4) of this section.

(4) Any person submitting information to ecology under this chapter may request that ecology keep information that is not emissions data confidential as proprietary information under RCW 70.94.205 or because it is otherwise exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW). All such requests for confidentiality must meet the requirements of RCW 70.94.205.

(5) Ecology's determinations of the verification status of each report are public information. All confidential data used in the verification process will remain confidential.

NEW SECTION

WAC 173-441-160 Ecology to share information with local air authorities and with the energy facility site evaluation council. (1) Ecology must share any reporting information reported to it with the local air authority in which the person reporting under these rules operates.

(2) Ecology must share with the energy facility site evaluation council any information reported to ecology under these rules by facilities permitted by the council, including notice of a facility that has failed to report as required.

NEW SECTION

WAC 173-441-170 Severability. If any provision of the regulation or its application to any person or circumstance is held invalid, the remainder of the regulation or application of the provision to other persons or circumstances is not affected.

WSR 10-24-114

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 10-13—Filed December 1, 2010, 9:56 a.m., effective January 1, 2011]

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

Purpose: The purpose of this rule making is to incorporate EPA's requirements for reporting greenhouse gases into the state air operating permit regulation, chapter 173-401 WAC. Ecology revised the definition of "major source" and added the definition of "subject to regulation." This adoption keeps several hundred small sources out of the federal permitting program.

Beginning January 1, 2011, sources with an air operating permit must report their greenhouse gas emissions when revising or renewing this permit. Beginning July 1, 2011, sources that have the potential to emit 100,000 tons per year or more of greenhouse gases become subject to the air operating permit program, regardless of their emissions of other pollutants. These newly subject sources must apply for an air operating permit on or before July 1, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 173-401-200.

Statutory Authority for Adoption: RCW 70.94.161 and 70.94.510.

Adopted under notice filed as WSR 10-20-145 on October 5, 2010.

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: December 1, 2010.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 02-02, filed 9/16/02, effective 10/17/02)

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

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

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

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

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

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

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

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

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

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

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

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

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

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

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

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

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

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

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

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

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

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

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;

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

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

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

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

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

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

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

(a) Carbon monoxide;

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

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

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

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

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

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

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

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

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

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

of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

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

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

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

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

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

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

(c) Is not a major source;

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

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

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

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

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

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

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

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include

any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

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

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

(b) The term "tpy (tons per year) CO₂ equivalent emissions" (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.

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

WSR 10-24-118
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 1, 2010, 11:46 a.m., effective January 1, 2011]

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

Purpose: Classification 4601 was one of the original classifications developed in 1911 when explosives production was much different than it is now. With the development of more stable products, better methods, and safety regulation[s] by numerous state and federal agencies, a review was warranted. Classification services conducted a study of the explosives industry in Washington state. Classification 4601, used for explosives ammunition and fireworks manufacturing, is assigned to only seven employers, in three subcodes. The results of the study support the need for rule changes. This rule making will put explosive dealers into a classification more closely aligned with the nature of their work, and reassign the few businesses remaining in class 4601 to other classifications that are a better fit for their operations.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17A-4601; and amending WAC 296-17A-2106, 296-17A-3402, and 296-17A-3701.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Adopted under notice filed as WSR 10-20-133 on October 5, 2010.

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 3, Repealed 1.

Date Adopted: December 1, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2106 Classification 2106.

2106-00 Fertilizer, anhydrous ammonia and agricultural chemical dealers

Applies to establishments engaged in the sale of fertilizer, anhydrous ammonia, and agricultural chemicals. This classification includes the mixing of wet or dry chemical fertilizers all of which fall into one of three categories: Nitrogen, phosphate or potassium. Fertilizer dealers may use a chemical or mechanical process to mix one or more of the basic fertilizers or combine portions of each per customer specifications. Included in this classification is the manufacture, distribution, and application of anhydrous ammonia which is dry ammonia gas compressed into a liquid and used as a fertilizer. Also included in this classification are establishments that sell and distribute "natural" fertilizers (manure). Typical establishments in this classification include, but are not limited to, commercial fertilizer dealers, farmer co-ops, and grange supply dealers which may do some chemical mixing but are more predominately involved in the sales and delivery of the fertilizer.

This classification excludes the mining of raw ores (phosphate and potassium) used in *manufacturing* the fertilizer which is to be reported separately in classification 1701; the manufacture of ammonia and nitric acid which is to be reported separately in classification 3701; and the application of fertilizer by a custom farm services contractor which is to be reported separately in classification 4808.

2106-01 Explosive powder and chemical dealers

Applies to establishments engaged in the sale of explosive powders and chemicals, including the incidental mixing, blending, packaging, and bulk delivery and/or blending at the customer's site and in the sale of blasting supplies. Products include, but are not limited to, dry, liquid and gel explosives, fuses and detonators.

This classification excludes the mining of raw ores or the manufacture of chemicals used in manufacturing explosives which are to be reported separately in 1701 and 3701 respectively, the manufacture of explosive devices which is to be reported separately in the applicable manufacturing classification, and contract blasting such as at a quarry or construction site which is to be reported separately in classification 0103.

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

WAC 296-17A-3402 Classification 3402.**3402-00 Air compressor: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of air compressors. This includes air or gas compressors used for paint sprayers, air tools, tire inflation, and general industrial purposes. Operations contemplated include, but are not limited to, welding, machining, general mechanical and electrical work. Machinery and equipment includes, but is not limited to, hand and air tools, welders, punches, shears, and compression equipment. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-01 Printing or bookbinding machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of printing or bookbinding machinery. The outside casings of the machines may be made of plate metal that varies between 1" to 2 1/2" in thickness. The machines used to make the presses and binding machinery may include both Computer Numeric Controlled (CNC) and manual mills and lathes. Other machinery used in the manufacturing process includes, but is not limited to, welders or cutters, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and the set up, installation and repair of print-

ing or bookbinding machinery which is to be reported separately in classification 0603.

3402-02 Pump, safe, scale, auto jack, and water meter: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of pumps, safes, scales, auto jacks, and water meters. Materials range from brass screws and rubber washers used to rebuild water meters to plate metal and steel castings used for safe and pump manufacturing. Machinery includes, but is not limited to, hand tools used for repairs, lathes, welders, and pressure testers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; the installation and repair of safes which is to be reported separately in classification 0607; and the installation of pumps which is to be reported separately in the applicable classification.

3402-03 Shoe or textile machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of shoe machinery or textile machinery. Metal materials used vary in size, shape and dimension. Machinery includes, but is not limited to, drills, mills, lathes, saws, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of shoe or textile machinery which is to be reported separately in classification 0603.

3402-04 Confectioners or food processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of food processing or confectioners machinery. Metal materials used vary in size, shape and weight. These establishments often have an assembly line operation and a separate electronic assembly area. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of confectioners and food processing machinery which is to be reported separately in classification 0603.

3402-05 Machine shops, N.O.C.

Applies to establishments engaged in general machine shop operations not covered by another classification (N.O.C.), tool sharpening, and mobile welding shops. Many of the establishments in this classification are "job shops." Size and shape of materials vary with steel and aluminum being the most common. Plastics, light weight aluminum, and alloyed metals are becoming increasingly popular in the manufacture of equipment for some industries. These establishments often have welding shops along with machine shops. Machinery and equipment includes, but is not limited to, mills, lathes, grinders, saws, welding equipment, inspection equipment, and material handling equipment. Machinery is both manual and Computer Numeric Controlled (CNC). This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, however, sometimes the broken part is removed and taken back to the shop for repair.

This classification excludes repairs to buildings and structures which are to be reported separately in the appropriate construction classification, and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

Special note: The term "job shop" is an industry term that means the shop will produce products to customer specifications.

3402-06 Power saw, lawn and garden equipment, small motor, N.O.C.: Repair

Applies to establishments engaged in repairing small power tools, small motors powered by gas or diesel, outboard marine engines, and lawn and garden equipment not covered by another classification (N.O.C.). The largest piece of equipment repaired in this classification is generally a riding lawn mower. Classification 3402-06 is assigned in conjunction with a store classification for establishments that have a store operation and also repair the type of items they sell. Classification 3402-06 may also be assigned to a manufacturer representative who performs warranty repairs. Tools used in this type of repair are mainly hand and air tools. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the repair of electrical motors which is to be reported separately in classification 5201.

3402-07 Gear: Manufacturing or grinding

Applies to establishments engaged in the manufacture or grinding of gears. Establishments in this classification may also cut key slots and broaches. Establishments that cut stock to manufacture the gear are often not the same ones that perform the final grinding process. Gears may go through two,

three, or four different grinding, slotting, and/or keying establishments and then go to another establishment for electroplating or galvanizing before they are ready for sale or use. Precision machine shops may grind gears to the ten thousandths of an inch. Materials used are usually stainless steel, aluminum, or plastic. Machinery includes, but is not limited to, gear shapers, drill presses, mill, hobbers, grinders, some of which might be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-08 Elevator: Manufacturing

Applies to establishments engaged in the manufacture of elevators and associated electronic components. Machinery includes, but is not limited to, mills, drills, lathes, saws, and grinders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation, service, and repair of elevators which is to be reported separately in classification 0602.

3402-12 Multimedia blasting

Applies to establishments engaged in multimedia (such as, but not limited to, glass, plastic and sand) blasting operations which strip paint or other coatings from metal or fiberglass. Most of the blasting operations in this classification are done on automobiles, but it also applies to establishments that perform blasting on items such as, but not limited to, barbecue grills, and cast iron pieces. Multimedia blasting processes in this classification are performed in a shop, use less air pressure and media with softer finishes than other blasting operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and sandblasting of buildings or structures which is to be reported separately in classification 0504.

3402-14 Furnace, heater, radiator, wood, propane, or pellet stoves: Manufacturing

Applies to establishments engaged in the manufacture of furnaces, radiators, wood, propane, or pellet burning stoves or similar heating fixtures. Materials include, but are not limited to, metal cast parts, sheet metal, plate metal, aluminum, or stainless steel. Machinery includes, but is not limited to, hand tools, solder guns, punches, lathes, and saws. Establishments in this classification may have separate areas for electronic assembly and/or painting. This classification includes

the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of radiators for automobiles or trucks which are to be reported separately in classification 3402-48; and establishments engaged in the manufacture of baseboard heaters which are to be reported separately in classification 3404.

3402-16 Die casting

Applies to establishments engaged in the manufacture of products by die casting. Die casting is a manufacturing process for producing accurately-dimensioned, sharply-defined metal products which are referred to as "die castings." "Dies" are the steel molds used to mass produce the product. The process begins when ingots of various metal alloys are melted in die casting machines. The machine forces the metal into the die under hydraulic or pneumatic pressure. The casting quickly solidifies in the die, and is automatically ejected by the machine, and the cycle starts again. The castings are cleaned by grinding or sanding, which also removes any excess metal "flash." Many die casting manufacturers maintain their own machine shop for making the dies. Die making, when done as a part of die casting operations, is included within the scope of this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and establishments engaged in making dies for others which are to be reported separately in classification 3402-74.

3402-26 Saw blade: Manufacturing, assembly, or sharpening

Applies to establishments engaged in the manufacture, assembly, or sharpening of saw blades such as, but not limited to, those used in circular saws, band saws, ripsaws, key-hole saws, and handsaws such as hacksaws or meat saws. This classification also includes sharpening services for items such as, but not limited to, tools, scissors, and knives. Materials include, but are not limited to, high tensile steel and carbide tipped blades. Machinery includes, but is not limited to, saws, mills, drills, and hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the repair or sharpening of chain saws which are to be reported separately in classification 3402-06; and establishments engaged in the manufacture or repair of electrical saws which are to be reported separately in classification 5201.

3402-28 Heat treating metal

Applies to establishments engaged in heat treating metal. The heat treating process may use computer numeric controlled ovens or furnaces. The oven may heat up to 1200 degrees Fahrenheit and a furnace may heat up to 2000 degrees Fahrenheit. The metal(s) is placed on a platform; the platform is hydraulically moved into the first chamber and the door is automatically closed. At this time, the oxygen is burned from the chamber. Then the second chamber door is opened and the metal enters the oven/furnace. Depending upon the specifications, the heat treating process usually takes six to sixteen hours. When the metal is finished in the heating chamber it returns automatically to the first chamber. Then the platform lowers and the metals are dipped into a cooling agent. Once the metals are cooled to room temperature the platform rises, the door opens, and the materials are removed. The process is essentially the same using noncomputer numeric controlled heat treating equipment except that, rather than being hydraulically operated, the machine operators move the metals through the system. Many establishments do not produce a product, but heat treat a variety of products to customer specifications. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-29 Nut, bolt, screw, nail, tack, rivet, eyelet spike, needle, N.O.C.: Manufacturing Sprinkler head, speedometer, carburetor: Manufacturing or assembly

Applies to establishments engaged in the manufacture of nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, and needles not covered by another classification (N.O.C.). This classification also applies to establishments engaged in the manufacture or assembly of sprinkler heads, speedometers, or carburetors. Materials include, but are not limited to, steel or iron rods which may be pressed or formed, and small component parts. Machinery includes, but is not limited to, saws, shears, presses, chuckers, threading and tapping machines, some of which may be Computer Numeric Controlled (CNC). Establishments may have separate areas for deburring, inspecting, packing and shipping. The carburetor rebuilding may be performed on vehicles that are driven or towed into the shop, or on carburetors that have been already removed from the vehicles. In either case the repairs are made exclusively with hand and air tools and sometimes a diagnostic scope and a drill press. A speedometer is usually embodied with a mileage recording mechanism. The central feature of the device is a permanent magnet. There are gears, spindles, and a drive shaft present in most speedometers. There is also a unit counting disc and a spiral spring calibrator. Hand tools are used almost exclusively in the repair of

this kind of speedometer. Today many speedometers are computer controlled. Basically, if this kind of speedometer is in need of repair, a computer chip(s) is replaced, using hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of hardware that is not covered under another classification, such as handles, latches, and hinges which are to be reported separately in classification 3404, and the repair of speedometers or carburetors in a vehicle which is to be reported separately in the appropriate vehicle repair classification.

3402-32 Abrasive wheel: Manufacturing

Applies to establishments engaged in the manufacture of abrasive wheels. Manufacturing operations often include a laboratory where carbon and other materials are mixed together to form the abrasive edge of the mainly high tensile steel wheels. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-40 Welding or cutting, N.O.C. (*mobile operations limited to repair of equipment and machinery*)

Applies to establishments engaged in welding or cutting operations not covered by another classification (N.O.C.) either in the shop or at the customer's site. Steel is the predominant material along with some aluminum alloys. Machinery is predominantly welding equipment, but may include tools such as, but not limited to, grinders, saws, drills, and material handling equipment. This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, sometimes with the use of the customer's equipment; however, broken parts may be removed and taken back to the shop for repair.

This classification excludes welding construction and repairs to buildings or structures which are to be reported separately in the appropriate construction classification and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

3402-48 Automobile or truck, radiator and heater core: Manufacturing and repair shops

Applies to establishments engaged in the manufacture and/or repair of automobile or truck radiator and heater cores. Manufacturers in this classification may have a die casting area and a separate electronic assembly area. Tools and equipment include, but are not limited to, hand tools, solder guns, and punches. Shops that repair radiators may work on the radiators in the vehicles, but usually the radiators have been removed from the vehicle. The radiator is examined and the core may be removed. Next the radiator is cleaned, air pressurized, and dipped in a water tank to check it for leaks. Once the leaks are found they can generally be repaired by welding the holes shut. The radiator is dipped again to ensure the repair has been made properly. Cleaning the radiator may be done by sandblasting, ultra sound baths or by "rodding" the radiator to remove corrosion. Repair equipment includes, but is not limited to, welders, air and hand tools, dipping tanks, hoists, and forklifts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-60 Office machinery, N.O.C.: Manufacturing or assembly; Cash register or sewing machines: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of cash registers, sewing machines and office machinery not covered by another classification (N.O.C.) such as, but not limited to, copiers, collators, mail/postage machines, calculators and automatic letter openers. Component parts may be metal, plastic, or wood. Operations include, but are not limited to, cutting, shaping, forming, drilling, riveting, clamping, and bolting; there may be a separate electronic assembly area. Machinery and tools vary within this classification; some establishments use hand and air tools only, others use additional equipment such as, but not limited to, saws, lathes, mills, drills, or water jets, some of which may be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-61 Small arms and ammunition: Manufacturing, assembly, or rebuild

Applies to establishments engaged in the manufacture, assembly, or rebuild of small arms, the manufacture of ammunition and reloading. For the purpose of this classifica-

tion, small arms means .50 caliber or less, such as pistols, rifles, shotguns, and light machine guns. Operations include, but are not limited to, metal stamping of casings, machining, assembling, and a high proportion of inspecting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; (~~establishments engaged in the manufacture of ammunition which is to be reported separately in classification 4601;~~) the manufacture or repair of heavy arms which is to be reported separately in classification 5109; and gun stores which are to be reported separately in classification 6309.

3402-74 Tool: Manufacturing, not hot forming or stamping; Die: Manufacturing - ferrous

Applies to establishments engaged in tool manufacturing or die manufacturing, for others, from ferrous materials. Tools manufactured in this classification are usually cutting tools used in lathes, mills, rotors, and saws. Machinery includes, but is not limited to, sharpeners, grinders, lathes and mills, which are both manual or Computer Numeric Controlled (CNC). The die manufacturing included in this classification includes those made exclusively of ferrous materials including, but not limited to, jigs, fixtures, and dies for metal work in general. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of machine-finished tools which are to be reported separately in classification 3402-83.

3402-77 Auto, truck, semi-trailer and bus body: Manufacturing;

Travel trailer body: Manufacturing or repair

Applies to establishments engaged in the manufacture of auto, truck, and bus bodies, and in the manufacture or repair of travel trailer bodies or cargo containers. Repairs are usually made with the use of welders or cutting torches and air or hand tools. These establishments will also repair or replace hydraulic units. Material used in the manufacture of goods in this classification is usually steel and aluminum, varying in thickness from 16 gauge to plate metal up to one inch thick. Shapes include, but are not limited to, sheet metal, tubes, solid rod or I-beams. Equipment includes, but is not limited to, shears, breaks, hydraulic presses, iron workers, drill presses, grinders, welders, hoist, cranes, and forklifts. Shops may have a finish sanding area as well as a paint area where the vehicle bodies are sprayed with primer, a body bonding

material, or a finish coat of paint. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-83 Tool: Manufacturing and machine finishing

Applies to establishments engaged in manufacturing and machine finishing tools. Tools manufactured in this classification are usually hand held instruments such as, but not limited to, wrenches, screw drivers, hammers, torque wrenches, pliers, and sockets. Machinery includes, but is not limited to, air and hand tools, polishers, grinders, inspection equipment, mills, lathes, shapers, and drill presses, some of which may be Computer Numeric Control (CNC). Establishments may have a galvanizing and/or electroplating area for the finish work which is included when performed by employees of employers subject to this classification. Other establishments in this classification send the finish work out. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of tools from ferrous materials which are to be reported separately in classification 3402-74; and establishments engaged in tool forging which are to be reported separately in classification 5106.

3402-85 Auto or truck parts: Machining or rebuild not in vehicle

Applies to establishments engaged in machining or rebuilding auto or truck parts such as, but not limited to, water pumps, fuel pumps, transmissions, heads, brake drums, ball joints, and rear ends, which are not in the vehicle. Work contemplated in this classification may also include manufacturing sockets, pulleys, shafts, fittings, flywheels, and/or bearings. Machinery includes, but is not limited to, mills, lathes, grinders, sanders, presses, welders, and balancing equipment. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines which are to be reported separately in classification 3402-86.

3402-86 Auto, truck or aircraft engine, N.O.C.: Manufacturing or rebuilding

Applies to establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines not covered by

another classification (N.O.C.), including manufacturing the component parts. Establishments in this classification often specialize in the type of engines they make or rebuild. The basic difference between automobile, truck, and aircraft engines is the size and weight of the parts being worked on. Engine rebuild shops use many specialized machines and air tools to tear the core down to an engine block; then rebuild the engine. After the engine is stripped down to the engine block, it is placed in a machine called a baker which heats to approximately 600 degrees and bakes away the grease. After baking, the engine block is placed in a sand blaster where the surface is cleaned with very fine steel shot. The engine block is then placed in a large pressure washer which removes the steel shot. Next, the crank and cam shafts are ground and turned on machinery similar to lathes. There is usually a separate room or area which is called the "head shop" where the heads and valves are machined on valve grinders, valve facers, and head grinders. Engine rebuild shops that do not have the equipment to grind the crank and cam shafts will contract work out to other shops, or buy new crank shafts and cam shafts. Other machinery includes, but is not limited to, boring bars and hones to polish cylinder walls, small pressure washers for oil pans and other smaller parts, solvent tanks, and hoists or forklifts for lifting the engines or engine parts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in machining or rebuilding auto or truck parts, other than engines, which are to be reported separately in classification 3402-85.

3402-91 Bed spring or wire mattress: Manufacturing

Applies to establishments engaged in the manufacture of bed springs or wire mattresses. The wire stock is coiled and cut to length on a coiling machine, then tempered in an oven to produce the spring. The coils are fastened to the frame either by hand or by machine. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of stuffed mattresses which are to be reported separately in classification 3708.

3402-93 Valve: Manufacturing

Applies to establishments engaged in the manufacture of valves. Valves regulate the flow of air, gases, liquids, or loose material through structures by opening, closing, or obstructing passageways. They are operated manually, electrically, with compressed air, or hydraulic pressure. Valves are usu-

ally cut from aluminum, steel, or stainless steel either by a Computer Numeric Controlled machine (CNC) or water jet machine. Depending upon the complexity of the valve, they are assembled in one or several stages. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of valves made in a die mold which are to be reported separately in classification 3402-74.

3402-94 Precision machined parts, N.O.C.: Manufacturing

Applies to establishments engaged in manufacturing precision machined parts not covered by another classification (N.O.C.). Most of these establishments are "job shops." Job shops make component parts for other businesses according to customer specifications, rather than manufacturing a specific product. Many establishments in this classification manufacture precision parts for the aerospace industry. Machining usually begins with solid blocks of material such as, but not limited to, steel, aluminum, titanium, inconel, or plastic, although some hollow tube, flat bar, and angle stock may also be used. The "rough cuts" are often made on manual machines, and the finish cuts on Computer Numeric Controlled (CNC) machines. Depending on the establishment and the job specifications, a specific part may be sent to one or more additional shops to be tempered, milled, or inspected before the original establishment is through with the manufacturing process. Some parts are so sensitive that climate controlled conditions are necessary. Both manual and CNC mills and lathes are the most common types of machines used. Others include, but are not limited to, saws, drills, and grinding machines. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-95 Storage battery: Manufacturing, assembly or repair

Applies to establishments engaged in the manufacture, assembly, or repair of storage batteries. Lead ingots, weighing 20-25 pounds, are melted and poured into a mold or casting machine. After the grids are cooled lead oxide is then pumped onto each side of a grid and cured by baking in an oven of about 300 - 400 degrees F. The plates are then assembled by placing a negative separator (zinc) between a positive separator (copper), and so forth until there are enough of these cells to form the battery. Next, they are sent to a burning

machine that cures the paste and plates. After the burning process, the plates are placed into a plastic or hard rubber box-like container and cured for two or three days. The plates are welded together and the top is attached to the body of the battery case with an epoxy glue. Diluted sulfuric acid is added to the battery and then it is put on a charger. The battery is then cleaned and packed for shipping. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of dry cell (flashlight type) batteries which are to be reported separately in classification 3602; and establishments engaged in battery sales and installation which are to be reported separately in the applicable automotive services classification.

3402-96 Automobile or motorcycle: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of automobiles or motorcycles. Most of the manufacturing operations, such as cutting, milling, and turning, are performed with Computer Numerically Controlled (CNC) machinery. Most of the assembly operations are performed with air and hand tools. Other machinery includes but is not limited to saws, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged only in the manufacture of auto bodies which are to be reported separately in classification 3402-77.

3402-98 Machinery, N.O.C.: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of machinery not covered by another classification (N.O.C.). For purposes of this classification, machinery means any combination of mechanical parts constructed primarily with metal. Finished products vary widely and range from hand held machines to those weighing thousands of pounds; products include, but are not limited to, grinding machines, boring machines, conveyer systems, and wood chippers. Machinery used to manufacture these items includes, but is not limited to, lathes, mills, press, breaks, shears, and welders, some of which may be Computer Numerically Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-99 Photo processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of photo processing machinery such as, but not limited to, photo processors or film enlargers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3701 Classification 3701.

3701-03 Ammonia, nitrogen and ammonium nitrate: Manufacturing

Applies to establishments engaged in the manufacture of ammonia, nitrogen and ammonium nitrate. Ammonia is a colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. The manufacturing process involves combining hydrogen and nitrogen gases with a catalyst which causes a reaction between the two gases when heated in a generator. Ammonium nitrate is a crystalline compound used mainly in fertilizers, explosives and propellants. The manufacturing process involves combining ammonia and nitric acid in a reactor. Nitrogen is a colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.

3701-04 Nitrate recovery from X-ray and photo films

Applies to establishments engaged in recovering nitrate or silver from X-ray and photo films. The recovery process involves placing the films in developing solutions, ionizing the solution and separating the elements.

3701-05 Dye and chemicals: Manufacturing

Applies to establishments engaged in the manufacture of all types of dyes and in the manufacture of dyes and chemicals that are used exclusively for tinting candles. Organic and inorganic compounds such as, but not limited to, phenols, alcohols, caustics, acids, salts and gases are used in the manufacturing process. Manufacturing methods include, but are not limited to, weighing raw materials to specifications and pumping them into vats where they are heated, agitated and cooled. They are then filtered through presses, dried in ovens, ground into a powder, and then packaged. Liquid or paste forms of dye go through the same process with the exception of the drying and grinding operations.

3701-06 Chemicals, N.O.C.: Manufacturing by nitration, alkylation and oxidation processes

Applies to establishments engaged in the manufacture of chemicals not covered by another classification (N.O.C.) using a nitration, alkylation or oxidation process. Nitration involves the combining of nitrate with an organic compound to produce nitrobenzenes used in solvents, fertilizers and acids. Alkylation involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products. Oxidation involves the combining of oxygen with other substances to produce products such as, but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.

This classification excludes the manufacture of ammonia or nitrogen which is to be reported separately in classification 3701-03 and the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, or acids which is to be reported separately in classification 3701-10.

3701-07 Chemical mixing, blending and repackaging only: Fireworks manufacturing

Applies to establishments engaged exclusively in mixing, blending or repackaging chemicals; it does *not* apply to the manufacture of ingredients for the mixing operation. The product may be mixed by hand or through a mechanical process. The equipment used by establishments covered by this classification is limited to storage tanks, mixing or blending screens and vats, filling and packaging machines and miscellaneous equipment such as fork lifts and trucks. Fireworks are assembled by hand and using hand operated tools.

This classification excludes establishments involved in more than a mixing, blending or repackaging operation which are to be reported separately in the appropriate chemical manufacturing classification, and technicians who set up and carry out fireworks displays who are to be reported separately in classification 6207.

3701-08 Cosmetics: Manufacturing

Applies to establishments engaged in the manufacture of cosmetics such as, but not limited to, soap, shampoo, hair conditioners, skin moisturizers, baby powder, lipstick, nail polish, bath oil, bath salts, and various personal care creams, gels or lotions. The process involves the mixing of premanufactured ingredients, using equipment such as storage tanks, mixers, heating devices, bottling/packaging/labeling equipment, and laboratory equipment for product development and quality control.

This classification excludes the manufacturing of the ingredients used in the mixing of the cosmetics.

3701-09 Drug, medicine, or pharmaceutical preparation: Manufacturing

Applies to establishments engaged in the manufacture of pharmaceuticals including drugs, medicines, and preparations such as, but not limited to, tablets, pills, ointments, liquids, and powders. Processes contemplated by this classification include mixing or blending of the base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings, and waxes used for coating tablets. Compounds are then pulverized, distilled, heated and/or dried.

This classification excludes the manufacture or harvest of the ingredients used in the manufacture of the pharmaceuticals.

3701-10 Oxygen, hydrogen, acetylene gas, carbonic acid gas: Manufacturing

Applies to establishments engaged in the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, dry ice, or acid. The manufacture of oxygen and hydrogen involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. The liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium. Acetylene is a highly flammable but non-toxic gas that is manufactured by reacting calcium carbide with water in a pressure generator which combines carbon and lime to form the end product. Carbonic acid gas, also known as phenol, is a caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.

3701-11 Alcohol: Manufacturing, distilling, N.O.C.

Applies to establishments engaged in manufacturing or distilling nonspirituous alcohol not covered by another classification (N.O.C.). Types of alcohol include, but are not limited to, methanol (wood alcohol), ethanol (grain alcohol) or denatured alcohol (combination of methanol and ethanol). Products produced include, but are not limited to, solvents, processing materials, germicides, antiseptics, or materials intended to be used as an ingredient in other products such as varnish and shellac. The processes for the production are varied depending on the type of alcohol and end product but all use a distillation process which involves the heating of liquids and subsequent condensation of vapors to purify or separate a substance contained in the original wood or grain product.

This classification excludes the manufacture of spirituous liquor which is to be reported separately in classification 3702 and gasohol distilling or refining which is to be reported separately in classification 3407.

3701-13 Polish, dressing, or ink: Manufacturing

Applies to establishments engaged in the manufacture of polish, dressings, or ink. Polish and dressing products include, but are not limited to, polish or dressings for shoes, leather, furniture, automobiles or metal. The ingredients and processes for polish and dressing manufacturing vary, depending on the end product. Typical ingredients include but are not limited to oils, waxes, resins, detergents, methanol, solvents, water and coloring. The process may involve a simple mixing operation or a more involved process involving heating or cooking and molding into a cake or stick form. Typical equipment includes, but is not limited to, weighing and measuring scales, mixers, stoves, molding apparatus, automatic filling, labeling, wrapping and packaging machines. Ink manufacturing covers all types of ink including, but not limited to, newspaper, book, magazine, and writing ink. The process involves the cooking of oils and resins which produces a resin. Pigments and dryers are blended into the resin mixture and diluted to proper consistency.

This classification excludes the manufacture of candles, crayons, and adhesives which is to be reported separately in classification 3701-25.

3701-14 Extract: Manufacturing, including distillation of essential oils

Applies to establishments engaged in the manufacture of extract including the distillation of essential oils. Extracts are concentrated forms of an essential component of a food or a plant. Extracts include, but are not limited to, flavorings, perfume oils, sachet powders, ingredients for skin conditioners and hop extracts used in the brewing of beer. The process involves extracting flavorings or oils from various plants, herbs or fruit peelings by pressing, cooking, steaming or distillation. The extracts may be mixed or blended with other extracts for strength, consistency or color and are then bottled or canned. Typical equipment includes, but is not limited to, steam cookers, presses, distillation apparatus, filters, grinders, tanks, vats and filling, packaging and labeling machines.

This classification excludes perfume manufacturing which is to be reported separately in classification 3701-15; mint distilling which is to be reported separately in classification 3701-17; and hop pellet manufacturing which is to be reported separately in classification 2101.

3701-15 Perfume: Manufacturing, including distillation of essential oils

Applies to establishments engaged in the manufacture of perfumes including the distillation of essential oils. Perfumes may be used as a personal fragrance or by other manufacturers such as in the making of scented candles. The process typically involves the distillation, cooking, grinding, compounding, drying, blending, or liquidizing of ingredients. These ingredients may include, but not be limited to, extracts, oils, colors and binders.

This classification excludes the manufacture of candles which is to be reported separately in classification 3701-25.

3701-17 Mint distilling

Applies to establishments engaged in the distillation of mint. The process may begin with mint oil that is purchased from others or with the distillation of the mint leaves into mint oil. The mint leaves are chopped and blown into a mint steamer which lifts the moisture and oils from the mint. The resultant steam then goes through a series of condensation lines. Water is added to force the oil to the top of the liquid. The mint oil is heated for purification and to lessen the fragrance. Various mint oils may then be blended together to produce different types such as spearmint and peppermint. The product is then packaged in stainless steel or epoxy lined barrels.

This classification excludes the raising and harvesting of mint which is to be reported separately in classification 4811.

3701-20 Salt, borax or potash producing or refining

Applies to establishments engaged in the production of or refining of salt, borax or potash. This classification includes the manufacture of common salt used in chemical and food processing, borax which is used in the manufacture of glass, glazes, soap, and boric acid, and potash which is used in fertilizer. Salt ores received from others are dissolved in water to produce a brine of the desired concentration. It is

refined into common salt by adding caustic soda and soda ash. Potash is refined by adding an amine to the brine which causes the salts to float to the surface where they are skimmed off. Borax is made by separating it from the potash by a rapid cooling process. All three of these products are then fully evaporated by heating in a partial vacuum to produce crystals or granules which are then dried.

This classification excludes the production of raw materials used in the manufacture of these products.

3701-21 Serum, antitoxin or virus: Manufacturing

Applies to establishments engaged in the manufacture of serums, antitoxins, or viruses. The process involves considerable microscopic laboratory work as well as working with animals. The animals are injected with bacteria and viruses, periodically bled and eventually killed. The killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

This classification excludes the manufacture of other drugs or medicines which are to be reported separately in classification 3701-09.

3701-22 Paint, varnish or lacquer: Manufacturing

Applies to establishments engaged in the manufacture of paint, varnish, lacquer, enamel, shellac, paint removers and thinners. The paint manufacturing process involves a series of mixing and grinding operations. The pigments (solids) are then blended with oils or resins (liquids). A paint extender may also be added at this point. The paint is then pumped into filling machines where various sized containers are filled and then labeled. Lacquer, varnish, enamel, shellac and paint removers and thinners vary in the ingredients used but the process is similar to that of paint manufacturing in that it is mainly a mixing operation. Varnishes involve a cooking process which is generally not used in the manufacture of the other products included in this classification.

This classification excludes the production of raw materials used in the manufacture of these products.

3701-23 Putty or synthetic resin: Manufacturing

Applies to establishments engaged in the manufacture of putty or synthetic resin. Putty is a finely powdered chalk mixed with linseed oil. The main ingredients for both putty and synthetic resins are ground chalk, limestone and/or calcite. The process for both products involves grinding and mixing operations.

This classification excludes the production of the raw materials used in the manufacture of these products.

3701-25 Candle, crayon, and paste or glue: Manufacturing

Applies to establishments engaged in the manufacture of candles, crayons, and synthetic adhesives such as paste or glue. Raw materials used for making candles include, but are not limited to, beeswax, paraffin, stearin, wicks and colors which are received from others. The wax is heated in kettles or similar devices into which the wicks are dipped either by hand or by dipping equipment which can be either manual or automated. A fragrance may be added to the melted wax for scented candles. When the wax has attained the desired shape and size it is hung on lines to dry. The wicks are then cut and

the candles are placed in molds to shape the base of the candle. Color is then added by dipping either by hand for specialized designs or by machine for solid colors. The candles are then inspected, wrapped, packaged and labeled. Crayons use the same ingredients that are used in making candles with the exception of the wicks. The type of wax used in making crayons determines the hardness. The wax is melted in a kettle or similar device and poured into molds for shaping and cooling. The crayons are then inspected, packaged and labeled. Synthetic paste or glue is made from powder or granule arabic gum or modified starch which is received from others along with preservatives and the containers and caps. The process involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

This classification excludes the manufacture of polish, dressing, or ink which is to be reported separately in classification 3701-13; the manufacture of glue from animal substances which is to be reported separately in classification 4301; and the production of raw materials used in the manufacture of these products.

3701-27 Hazardous/toxic material: Repackaging for disposal

Applies to establishments engaged in *identifying and repackaging* hazardous/toxic materials for disposal. This classification is distinguished from classification 4305-20, in that classification 3701-27 applies to the *identifying and repackaging for disposal* of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the *processing or handling* of such materials as medical or septic tank waste, drug lab or hazardous spill *cleanup*, and *reprocessing or handling* of low-level radioactive materials. For handling hazardous or toxic materials, the workers are equipped with protective clothing such as long sleeved shirts, depending on the material to which they will be exposed. They may also be equipped with steel toed boots, protective gloves, safety glasses and various types of respirator equipment. On a typical project, the first step is to visually inspect the materials to see if they appear to be the materials described on a job order. If there is a question of identity, a sample of the material is sent to a lab for analysis. The establishment may have its own lab facilities or the sample may be sent to an outside lab, or the customer may have it analyzed. Every component of the sample must be identified. Once the material has been identified, and all containers labeled, the containers are separated into appropriate groupings. Smaller containers of similar types of materials are packed into 55 gallon drums with plastic or other cushioning protective material to prevent breakage. All necessary paper work and forms required by various government agencies must be completed before the material can be transported to a disposal site.

This classification excludes hazardous/toxic material *processing or handling*, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup; reprocessing or handling of low-level radioactive materials which is to be reported separately in classification 4305-20; and the replacement of nontoxic toner in cartridges used in business machines which is to be reported separately in classification 4107.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-4601 Classification 4601.

**WSR 10-24-119
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed December 1, 2010, 11:49 a.m., effective January 1, 2011]

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

Purpose: OSHA revised their hexavalent chromium standard to adopt new requirements related to the notification requirements in the exposure determination provisions. OSHA now requires employers to notify employees of the results of all hexavalent chromium exposure level monitoring results, not just exposures that exceed the PEL (permissible exposure limit). The department changed the current fifteen day notification requirement to a five day notification requirement to be in line with OSHA's standard.

Citation of Existing Rules Affected by this Order: Amending WAC 296-62-08009 Exposure determination.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-19-113 on September 21, 2010.

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

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

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

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

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

Date Adopted: December 1, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 06-16-106, filed 8/1/06, effective 9/1/06)

WAC 296-62-08009 Exposure determination. (1) General. Each employer who has a workplace or work operation covered by this section shall determine the 8-hour TWA exposure for each employee exposed to chromium (VI). This determination shall be made in accordance with either subsection (2) or (3) of this section.

(2) Scheduled monitoring option.

(a) The employer shall perform initial monitoring to determine the 8-hour TWA exposure for each employee on the basis of a sufficient number of personal breathing zone air samples to accurately characterize full shift exposure on each shift, for each job classification, in each work area. Where an employer does representative sampling instead of sampling all employees in order to meet this requirement, the employer shall sample the employee(s) expected to have the highest chromium (VI) exposures.

(b) If initial monitoring indicates that employee exposures are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

(c) If monitoring reveals employee exposures to be at or above the action level, the employer shall perform periodic monitoring at least every six months.

(d) If monitoring reveals employee exposures to be above the PEL, the employer shall perform periodic monitoring at least every three months.

(e) If periodic monitoring indicates that employee exposures are below the action level, and the result is confirmed by the result of another monitoring taken at least seven days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(f) The employer shall perform additional monitoring when there has been any change in the production process, raw materials, equipment, personnel, work practices, or control methods that may result in new or additional exposures to chromium (VI), or when the employer has any reason to believe that new or additional exposures have occurred.

(3) Performance-oriented option. The employer shall determine the 8-hour TWA exposure for each employee on the basis of any combination of air monitoring data, historical monitoring data, or objective data sufficient to accurately characterize employee exposure to chromium (VI).

(4) Employee notification of determination results.

(a) In general industry (~~where the exposure determination indicates that employee exposure exceeds the PEL,~~) within (~~fifteen working~~) five work days after making an exposure determination in accordance with subsection (2) or (3) of this section, the employer shall (~~either post the results in an appropriate location that is accessible to all affected employees or shall~~) individually notify each affected employee (~~individually~~) in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

(b) In construction and shipyards, marine terminals, and longshoring (~~where the exposure determination indicates that employee exposure exceeds the PEL, as soon as possible but not more than~~) within five (working) work days (later the employer shall either post the results in an appropriate location that is accessible to all affected employees or shall notify each affected employee individually in writing of) after making an exposure determination in accordance with subsection (2) or (3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

(c) Whenever the exposure determination indicates that employee exposure is above the PEL, the employer shall describe in the written notification the corrective action being taken to reduce employee exposure to or below the PEL.

(5) Accuracy of measurement. Where air monitoring is performed to comply with the requirements of this section, the employer shall use a method of monitoring and analysis that can measure chromium (VI) to within an accuracy of plus or minus twenty-five percent and can produce accurate measurements to within a statistical confidence level of ninety-five percent for airborne concentrations at or above the action level.

(6) Observation of monitoring.

(a) Where air monitoring is performed to comply with the requirements of this section, the employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to chromium (VI).

(b) When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with clothing and equipment and shall assure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures.