

WSR 12-04-004
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 23, 2012, 9:47 a.m., effective February 23, 2012]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Compliance is necessary pursuant to chapter 7, Laws of 2011 1st sp. sess., that imposes a safety net assessment on nonexempt nursing facilities in Washington state. Compliance is also necessary pursuant to state plan amendment program requirements.

Purpose: Chapter 7, Laws of 2011 1st sp. sess., imposes a safety net assessment on nonexempt nursing facilities in Washington state. The department is adding WAC 388-96-910 to provide additional direction for implementation of this new regulation.

Statutory Authority for Adoption: Chapter 7, Laws of 2011 1st sp. sess.

Other Authority: Chapter 74.48 RCW.

Adopted under notice filed as WSR 11-24-048 on December 2, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: January 12, 2012.

Katherine I. Vasquez
 Rules Coordinator

NEW SECTION

WAC 388-96-910 Safety net assessment. (1) Chapter 7, Laws of 2011 1st sp. sess. (the Act) imposes a safety net assessment (SNA) on nonexempt nursing facilities in Washington. Each year, under section 16 of the Act, the department of social and health services (the department) may adjust the amount(s) of the SNA to be paid for the next state fiscal year (SFY), beginning July 1. If necessary, the department may further adjust the amount(s) of the SNA at other times during the SFY. Although subject to change as necessary and as permitted under the Act, the expectation is that each year the SNA will be imposed at two different levels: a higher level for most nonexempt facilities, and a significantly lower level for facilities that have either a high medicaid census on the prior year's cost report or a high number of

licensed beds. For SFY 2012, those thresholds were thirty-two thousand medicaid resident days, and two hundred and three licensed beds. Those thresholds may change, as necessary and permitted under the Act. Beginning July 1, 2012 the department will submit any adjustments to the SNA amount(s), along with the data supporting the adjustments, to the Washington health care association and the aging services of Washington for review and comment at least sixty calendar days prior to implementation of the adjusted assessment amounts. These submissions may be made electronically. If necessary to comply with the sixty-day notice requirement and still make the adjustment effective as of July 1, or another effective date, these notices may be made on a provisional, or potential, basis or bases.

(2) The status of each nursing facility under the Act will be determined based on the facility's characteristics as of July 1 of each SFY, but using the information on resident days from the prior calendar year's cost report. For example, a facility's status for the SNA for SFY 2014 (beginning July 1, 2013) would be based on the resident day information from the 2012 cost report. The status of facilities will not be altered thereafter during the SFY. Facilities that become licensed throughout the SFY will be subject to the SNA as of the date of their licensing. The office of rates management (ORM) of the aging and disability services administration (ADSA) of the department will inform each nursing facility of its status under the Act. A facility wishing to contest its status under the Act as determined by ORM may seek review of the determination under WAC 388-96-904.

(3) An add-on to each nonexempt facility's medicaid daily rate will be paid to reimburse the facility for the SNA it owes in relation to residents whose care is funded by medicaid.

(4) The SNA is assessed and payable on a monthly basis. The SNA must be reported on a form supplied by ORM. The SNA owed for each month, and the reporting form for that month, must be mailed to the department and postmarked no later than the twentieth day of the following month. Payments of the SNA are subject to an interest penalty of one percent per month for any payment which is delinquent for any portion of a month. This interest penalty is in addition to any civil fine or other enforcement action that the department may seek as authorized by section 20 of the Act. In addition to the remedies specifically listed in section 20 of the Act, the department may also offset such delinquent SNA payments and related penalties and/or fines against the facility's medical assistance reimbursement payments.

(5) The department has applied for, and received a waiver related to the SNA from the federal centers for medicaid and medicaid services (CMS). After issuance, such a waiver is subject to ongoing review for continued compliance. In the ongoing review process, it may be necessary for the department to modify the levels of the SNA, the standard(s) for designating facilities that pay the SNA at each level, and/or the categories of fully exempt facilities described in Sec. 17 of the Act. In that case, each facility may: be obligated to pay the SNA or pay a different amount of the SNA; be reimbursed for SNA amounts previously paid; or be obligated to repay any SNA add-on it has

received, all retroactive to the effective date of the modification contained in the waiver as approved by CMS.

Date Adopted: January 24, 2012.

Eva N. Santos
State Human Resources Director

WSR 12-04-016
PERMANENT RULES
OFFICE OF

FINANCIAL MANAGEMENT

[Filed January 24, 2012, 1:29 p.m., effective February 24, 2012]

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

Purpose: These changes are a result of the passage of ESSB 6503. This bill required immediate action to reduce expenditures during the 2009-2011 fiscal biennium. It was the intent of this bill that state agencies of the legislative branch, judicial branch, and executive branch including institutions of higher education, shall achieve a reduction in government operating expenses as provided in the bill. For some state employers this meant implementing temporary layoffs. There are provisions in the bill which required us to make changes to the temporary layoff rules in order to implement temporary layoffs as described in the bill.

These rules were originally filed correctly as CR-102 under WSR 10-20-176 on October 6, 2010. However, on November 10, 2010, when the permanent adoption was filed under WSR 10-23-040, the wrong drafts of these six rules were inadvertently filed.

Since the language that was inadvertently left out of WAC 357-31-010, 357-31-120, 357-31-180, and 357-31-175 pertained to higher education institutions we contacted the institutions and determined that there has not been a temporary layoff implemented which applied to nonrepresented employees since these rules were adopted in December 2010. The language that was left off of the other WACs (WAC 357-46-067 and 357-58-554), was language that was stated in ESSB 6503 therefore was still in effect even though it was not in the civil service rule.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-010, 357-31-120, 357-31-180, 357-31-175, 357-46-067, and 357-58-554.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 11-23-126 on November 21, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay? Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

WSR 12-04-018

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 24, 2012, 4:14 p.m., effective February 24, 2012]

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

Purpose: The 2011 legislature passed SHB 2017 which transferred the master license service program from the

department of licensing to the department of revenue. The department of revenue changed the name of the application from "master business application" to "business license application." WAC 192-300-210 and 192-350-050 are amended solely to reflect this change.

Citation of Existing Rules Affected by this Order: Amending WAC 192-300-210 and 192-350-050.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040.

Adopted under notice filed as WSR 11-22-095 on November 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: January 11, 2012.

Paul Trause
Commissioner

AMENDATORY SECTION (Amending WSR 07-23-130, filed 11/21/07, effective 1/1/08)

WAC 192-300-210 What requirements apply to professional employer organizations and client employers?

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a (~~master~~) business license application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent

by fax or in other electronic form acceptable to the department. The department will acknowledge receipt of the power of attorney to the sender and will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5)(a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier numbers, employment security numbers, names and Social Security numbers of corporate officers, owners and partners (if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;

(ii) Within thirty days for any client employer registering with the department for the first time; and

(iii) Within thirty days of the effective date whenever the professional employer organization and a client employer enter a professional employer agreement.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require professional employer organizations to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so under WAC 192-310-050.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department shall provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-050 What notice must a successor or partial successor provide to the department? (1) A successor or partial successor may be liable for unemployment taxes under RCW 50.24.210.

(2) A successor or partial successor may notify the department through the ~~((master))~~ business license application that it bought, leased, or acquired all or part of an existing business. Otherwise, a successor or partial successor shall notify the department in writing within thirty days. The notice shall include the successor's or partial successor's department registration number and the name of the predecessor.

(3) In addition, a successor or partial successor shall provide the department with requested information about the transfer under WAC 192-350-060.

WSR 12-04-022

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed January 25, 2012, 1:44 p.m., effective February 25, 2012]

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

Purpose: The agency is revising the rules to clarify that hospitals must be "operated" by a public hospital district (PHD) to qualify as a certified public expenditure hospital rather than "owned" by a PHD. This change ensures that the state remains in compliance with 42 C.F.R. 433.51(b). This rule revision also includes housekeeping changes such as replacing "department" with "agency" and cross-reference fixes from Title 388 WAC to Title 182 WAC as a result of the merge with health care authority on July 1, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 182-550-4650 and 182-550-5400.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 42 C.F.R. 433.51(b).

Adopted under notice filed as WSR 12-01-042 on December 13, 2011.

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

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

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

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

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

Date Adopted: January 25, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program. (1) The ~~((department's))~~ agency's "full cost" public hospital certified public expenditure (CPE) payment program provides payments to participating hospitals based on the "full cost" of covered medically necessary services and requires the expenditure of local funds in lieu of state funds to qualify for federal matching funds. The ~~((department's))~~ agency's payments to participating hospitals equal the federal matching amount for allowable costs. The ~~((department))~~ agency uses the ratio of costs-to-charges (RCC) method described in WAC ~~((388-550-4500))~~ 182-550-4500 to determine "full cost."

(2) Only the following facilities are reimbursed through the "full cost" public hospital CPE payment program:

(a) Public hospitals located in the state of Washington that are:

(i) ~~((Owned))~~ Operated by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(3) Payments made under the CPE payment program are limited to medically necessary services provided to medical assistance clients eligible for inpatient hospital services.

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal medicaid funds.

(5) The ~~((department))~~ agency determines the actual payment for inpatient hospital services under the CPE payment program by:

(a) Multiplying the hospital's medicaid RCC ~~((rate))~~ by the covered charges (to determine allowable costs), then;

(b) Subtracting the client's responsibility and any third party liability (TPL) from the amount derived in (a) of this subsection, then;

(c) Multiplying the state's federal ~~((matching))~~ medical assistance percentage (FMAP) by the amount derived in (b) of this subsection.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-5400 Payment method—Public hospital disproportionate share hospital (PHDSH). (1) The ~~((department's))~~ agency's public hospital disproportionate share hospital (PHDSH) program is a ~~((public hospital))~~ program for:

(a) Public hospitals located in the state of Washington that are:

(i) ~~((Owned))~~ Operated by a public hospital district; and
 (ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(2) The PHDSH payments to a hospital eligible under this program may not exceed the hospital's disproportionate share hospital (DSH) cap calculated according to WAC ~~((388-550-4900))~~ 182-550-4900(10). The hospital receives only the federal ~~((matching))~~ medical assistance percentage of the total computable payment amount.

(3) Hospitals receiving payment under the PHDSH program must provide the local match for the federal funds through certified public expenditures (CPE). Payments are limited to costs incurred by the participating hospitals.

(4) A hospital receiving payment under the PHDSH program must submit to the ~~((department))~~ agency federally required medicaid cost report schedules apportioning inpatient and outpatient costs, beginning with the services provided during state fiscal year 2006. See WAC ~~((388-550-5410))~~ 182-550-5410.

(5) PHDSH payments are subject to the availability of DSH funds under the statewide DSH cap. If the statewide DSH cap is exceeded, the ~~((department))~~ agency will recoup PHDSH payments first, but only from hospitals that received total inpatient and DSH payments above the hold harmless level, and only to the extent of the excess amount above the hold harmless level. See WAC ~~((388-550-4900))~~ 182-550-4900 (13) and (14), and WAC ~~((388-550-4670))~~ 182-550-4670.

WSR 12-04-024

PERMANENT RULES

COMMUNITY COLLEGES OF SPOKANE

[Filed January 25, 2012, 2:34 p.m., effective February 25, 2012]

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

Purpose: WAC 132Q-20-220 Report of accidents, is no longer in compliance with Washington state patrol WAC 446-85-010. This section is amended in order to be in compliance with WAC 446-85-010.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-20-220.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-23-163 on November 22, 2011.

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

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

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

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

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

Date Adopted: January 25, 2012.

Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-220 Report of accidents. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or *total of claimed damage to either or both vehicles exceeding ~~((300-00))~~ the reporting threshold for property damage accidents pursuant to state patrol WAC 446-85-010*, shall immediately report the accident to the appropriate vice-president or designee, and shall within twenty-four hours after such accident, file a state of Washington motor vehicle accident report if required.

WSR 12-04-027

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed January 26, 2012, 4:56 p.m., effective February 26, 2012]

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

Purpose: Upon order of the governor, the health care authority (HCA) was required to reduce its budget expenditures for fiscal year 2011 by 6.3 percent. This cost-saving measure was implemented as part of this mandated reduction and to bring HCA's payment methodology for qualified medicare beneficiary (QMB) clients into alignment with the payment formula established in WAC 182-502-0110 for medicare/medicaid dual-eligible QMB clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-517-0320.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 42 U.S.C. § 1396a (n)(2).

Adopted under notice filed as WSR 12-01-127 on December 21, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: January 25, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-032, filed 7/12/07, effective 8/12/07)

WAC 388-517-0320 Medicare savings and state-funded medicare buy-in programs cover some client costs.

(1) For qualified medicare beneficiary (QMB) clients, the ~~((department))~~ agency pays(=

(a) Medicare Part A premiums (if any);

(b) Medicare Part B premiums;

(c) Coinsurance, deductibles, and copayments for medicare Part A, Part B, and medicare advantage Part C with the following conditions:

(i) ~~Only the Part A and Part B deductible, coinsurance, and copayments up to the medicare or medicare allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicare.~~

(ii) ~~Only the deductible, coinsurance, and copayments up to the medicare allowed amount if the service is covered only by medicare.~~

(d) ~~Copayments for QMB eligible clients enrolled in medicare advantage Part C up to the medicare or medicare allowed amount whichever is less (WAC 388-502-0110).~~

(e) ~~QMB Part A and/or Part B premiums the first of the month following the month the QMB eligibility is determined)~~ medicare Part A premiums (if any) and medicare Part B premiums the first of the month following the month the QMB eligibility is determined. The agency pays, in accordance with WAC 182-502-0110, medicare coinsurance, deductibles, and copayments for medicare Part A, Part B and medicare advantage Part C.

(2) For specified low-income medicare beneficiary (SLMB) clients, the ~~((department))~~ agency pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months. No other payments are made for SLMBs. For clients eligible for both SLMB and medicare, the agency pays medicare Part B premiums and other medical costs in accordance with WAC 182-502-0110.

(3) For qualified individual (QI-1) clients, the ~~((department))~~ agency pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months unless:

(a) The client receives medicare categorically needy (CN) or medically needy (MN) benefits; and/or

(b) The ~~((department's))~~ agency's annual federal funding allotment is spent. The ~~((department))~~ agency resumes QI-1 benefit payments the beginning of the next calendar year.

(4) For qualified disabled working individual (QDWI) clients, the ~~((department))~~ agency pays medicare Part A premiums effective up to three months prior to the certification period if eligible for those months. The ~~((department))~~

agency stops paying medicare Part A premiums if the client begins to receive CN or MN medicare.

(5) For state-funded medicare buy-in program clients, the ~~((department))~~ agency pays(=

(a) ~~Medicare Part B premiums;~~ and

(b) ~~Only the Part A and B co-insurance, deductibles, and copayments up to the medicare or medicare allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicare.~~

(6) ~~For the dual eligible client, (a client receiving both medicare and CN or MN medical coverage) the department pays as follows:~~

(a) ~~If the service is covered by medicare and medicare, medicare pays only the deductible, and coinsurance up to the medicare or medicare allowed amount, whichever is less (WAC 388-502-0110); and~~

(b) ~~Copayments for medicare advantage Part C up to the medicare or medicare allowed copayment amount, whichever is less (WAC 388-502-0110);~~

(c) ~~If no medicare rate exists, the department will deny payment unless the client is also QMB then refer to section (1) above), in accordance with WAC 182-502-0110, medicare Part B premiums. Cost sharing for medicare deductibles, copayments and coinsurance is paid by the categorically needy (CN) or medically needy (MN) medicare program.~~

WSR 12-04-028

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-09—Filed January 26, 2012, 11:00 a.m., effective February 26, 2012]

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

Purpose: Some of the changes to WAC 220-69-240 will restrict the amount of sardines and/or anchovy that can be purchased for purposes other than human consumption or bait. The restriction already applies to the amount of sardine and/or anchovy that can be fished for purposes other than human consumption or bait.

Other changes to WAC 220-69-240, and changes to the remaining sections in this rule making, are meant to complement the federal electronic fish accounting system mandated for the Washington groundfish trawl fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-210, 220-69-240, 220-69-250, 220-69-260 and 220-69-274; and new sections WAC 220-69-246 and 220-69-256.

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

Other Authority: 50 C.F.R. 660.

Adopted under notice filed as WSR 11-23-182 on November 23, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, 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 7, Repealed 0.

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

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

Date Adopted: January 25, 2012.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-69-210 Definitions. The following definitions apply to this chapter:

(1) "Broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together. A broker is not required to have a wholesale fish dealer's license if the fish or shellfish only transit the state of Washington, and no storage, handling, processing, or repackaging occurs within the state.

(2) A broker who takes physical possession of fish or shellfish is an original receiver~~(s)~~ and is required to complete a fish receiving ticket. A broker acting strictly as an intermediary is not required to complete a fish receiving ticket for fish or shellfish that are delivered to an original receiver in the state of Washington. A broker is required to complete a fish receiving ticket for brokering an interstate or foreign sale from a Washington fisher who is not a holder of a direct retail endorsement, or a sale of fish or shellfish ~~(which)~~ that have entered the state from another state, territory, or country, if the fish or shellfish are placed into interstate or foreign commerce without having been delivered to an original receiver in the state of Washington.

~~((2))~~ (3) "Buyer" means a person who receives fish or shellfish~~(s)~~ and who is required to complete a fish receiving ticket. A wholesale fish dealer or a retail seller who directly receives fish or shellfish from a commercial fisher or receives fish or shellfish in interstate or foreign commerce is acting in the capacity of a buyer and is required to complete a fish receiving ticket. A buyer who is acting as an agent for a wholesale fish dealer is required to have a fish buyer's license.

~~((3))~~ (4) "Department" means: The Washington Department of Fish and Wildlife, Information Systems, 600 Capitol Way North, Olympia, Washington 98501-1091.

~~((4))~~ (5) "Delivery" means arrival at a place or port~~(s)~~ and includes arrivals from offshore waters to waters within the state, arrivals ashore from state or offshore waters, and arrivals within the state from interstate or foreign commerce.

~~((5))~~ (6) "Electronic fish receiving ticket" means the groundfish catch reporting system described in 50 C.F.R. § 660.113 (b)(4)(ii) that is used to submit harvest and fishing information to the department and the National Marine Fisheries Service.

(7) "Fish" means food fish classified under WAC 220-12-010 and game fish taken by treaty fishers and sold commercially.

~~((6))~~ (8) "Fisher" means a Washington-licensed commercial fisher or holder of a delivery permit.

~~((7))~~ (9) "Fresh" means unprocessed and unfrozen, regardless of whether the fish or shellfish are in the round, cleaned, or packaged for retail sale.

~~((8))~~ (10) "Frozen" means completely frozen throughout. Flash frozen and surface glaze frozen fish and shellfish are unfrozen fish and shellfish.

~~((9))~~ (11) "Nontreaty" means all entities not qualified by definition as "treaty."

~~((10))~~ (12) "Original receiver" or "receiver" means the first person in possession of fish or shellfish in the state of Washington who is acting in the capacity of a buyer. A fisher who is not the holder of a direct retail endorsement and who sells fish or shellfish to anyone other than a dealer, or a fisher who delivers fish or shellfish and places the fish or shellfish into interstate or foreign commerce, is the original receiver of the fish or shellfish. A cold storage facility that holds fish or shellfish for a fisher is not an original receiver, provided that the facility does not process, package, or otherwise handle the fish or shellfish. A person transporting fish or shellfish on behalf of a fisher, and who is in possession of an accurately completed commercial food fish and shellfish transportation ticket, is not an original receiver, provided that the fish or shellfish are transported only to a cold storage facility or to a buyer.

~~((11))~~ (13) "Processed" means preparing and preserving~~(s)~~ and requires a wholesale fish dealer's license. Preserving includes ~~((treated))~~ treating with heat, including smoking and kippering. Cooked crab ~~((are))~~ is processed. Preserving also includes freezing fish and shellfish.

~~((12))~~ (14) "Shellfish" means shellfish classified under WAC 220-12-020.

~~((13))~~ (15) "Treaty" and "treaty Indian," for purposes of fish receiving tickets only, means persons who are members of federally recognized Indian tribes that are entitled to harvest fish or shellfish under the Makah, Medicine Creek, Nez Perce, Point Elliott, Point-No-Point, Quinault, Umatilla and Walla Walla, and Yakima treaties, or persons who are members of federally recognized treaty tribes whose reservations are located within Washington state and who harvest fish or shellfish within their tribe's reservation.

~~((14))~~ (16) "Wholesale fish dealer" or "dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter~~s~~, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce. A wholesale fish dealer is required to be licensed. A fisher who is not a holder of a direct retail endorsement and sells fish or shellfish to anyone other than a wholesale fish dealer is required to have a wholesale dealer's license. A retail seller who receives fish or shellfish in interstate or foreign commerce from a person who is not a wholesale fish dealer is required to have a wholesale fish dealer's license.

~~((15))~~ (17) "Working day" means Monday through Friday, exclusive of a Washington state or federal holiday.

AMENDATORY SECTION (Amending Order 10-33, filed 3/2/10, effective 4/2/10)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to:

(a) Be a licensed wholesale fish dealer or fish buyer~~(and to fail to)~~; or

(b) Immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket.

(2) This section does not apply to persons delivering or receiving fish taken under the Pacific Coast Groundfish Shore-side Individual Fishing Quota (IFO) Program (50 C.F.R. § 660.140) who are in compliance with the provisions of WAC 220-69-250(5) and who:

(a) Complete electronic fish receiving tickets prior to either processing fish or removing the fish from the delivery site; and

(b) Electronically submit the electronic fish receiving tickets to the National Marine Fisheries Service and the department no later than twenty-four hours after the date the fish are received.

(c) Electronically submit any amendments made to the mandatory information required under WAC 220-69-256 after the initial submission required under (b) of this subsection.

(3) For purposes of this section, the term "completed" means that scale weights have been recorded for all delivered fish. The term "submitted" means that all mandatory information required under WAC 220-69-256 has been entered and timelines under subsection (2)(b) of this section have been met.

(4) Failure to be licensed under ~~(this)~~ subsection (1) of this section is punishable under RCW 77.15.620. Failure to properly prepare a fish receiving ticket is punishable under RCW 77.15.630.

~~((2))~~ (5) It is unlawful for any person originally receiving fresh or iced fish or shellfish previously delivered in another state, territory, or country, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

~~((3))~~ (6) It is unlawful for any original receiver of ~~((crab or spot shrimp))~~ shellfish to fail to record all ~~((crab or spot shrimp))~~ shellfish aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

~~((4))~~ (7) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, and/or licensed wholesale fish dealer who the buyers are operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.

~~((5))~~ (8) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed must be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.

~~((6))~~ (9) Forage fish:

(a) It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish must be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or sardine caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

(b) In the coastal sardine fishery, ~~((the amount of sardine, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by products for purposes other than human consumption or fishing bait, must be included))~~ it is unlawful to purchase, per sardine fishery vessel, more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait during the sardine fishery season. Sardines purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(c) In any forage fish fishery, ~~((the amount of anchovy, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by products for purposes other than human consumption or fishing bait,))~~ it is unlawful to purchase anchovy in excess of fifteen percent, by weight, of the total landing weight per vessel, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products. Anchovy purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(d) Any violation ~~((of))~~ under this subsection is a gross misdemeanor, punishable under RCW ~~((77.15.640))~~ 77.15.630.

~~((7))~~ (10) Geoduck: It is unlawful for any person receiving geoduck~~((s))~~, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the

actual delivery of geoduck((s)) from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoduck((s)) from the department of natural resources harvest tract to the point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630.

~~((8)) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.~~

~~((9)) (11) Puget Sound shrimp - Pot gear:~~

~~(a) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.560)) 77.15.630.~~

~~((a)) (b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record ((either)) 23A-C, 23A-E, 23A-W, or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630.~~

~~((b)) (c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630.~~

~~((c)) (d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630.~~

~~((d)) (e) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record ((either)) 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-~~

52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630.

~~((10)) (12) Puget Sound shrimp - Trawl gear:~~

~~(a) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning.~~

~~(b) For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515.~~

~~(c) For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408.~~

~~(d) All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket.~~

~~(e) Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.560)) 77.15.630.~~

~~((11)) (13) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers, from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify the dealer name; dealer phone number; date of delivery of crab to the original receiver; and the total number of pounds of crab caught by nontreaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. ((The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.)) Violation of this subsection is a gross misdemeanor, punishable under RCW ((77.15.560)) 77.15.630.~~

~~((12)) (14) Salmon and sturgeon:~~

~~(a) During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-47-001:~~

~~(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.~~

~~(ii) The report must include dealer or DRE holder name and purchasing location((-)); date of purchase((-)); each fish ticket number, including alpha, used on the purchasing date((-); and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).~~

~~(iii) When quick reporting is required, Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at psfishtickets@dfw.wa.gov; or via phone at 1-866-791-~~

1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 C.F.R. Ch. III § 300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a ~~((direct retail endorsement ()))~~DRE((+)) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location((:)); date of purchase((:)); each fish ticket number, including alpha, used on the purchasing date((:)); and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via e-mail at trollfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279.

(c) During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a ~~((direct retail endorsement ()))~~DRE((+)) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location((:)); date of purchase((:)); each fish ticket number, including alpha, used on the purchasing date((:)); and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-664-0689; e-mail at harborfishtickets@dfw.wa.gov; or phone at 1-866-791-1280.

(d) During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon, or for a ~~((direct retail endorsement ()))~~DRE((+)) holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location((:)); date of purchase((:)); each fish ticket number, including alpha, used on the purchasing date((:)); and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery. The time frame for submitting reports will be established by the department at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery will occur in conjunction with the adoption of said fishery through the Columbia River Compact. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via e-mail at crfishtickets@dfw.wa.gov; or via phone at 1-866-791-1281.

(e) Faxing a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW ~~((77.15.560))~~ 77.15.630.

~~((+13))~~ (15)(a) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins, the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers, the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by fax at 360-902-2943, or by toll-free telephone at 866-207-8223.

(b) It is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore.

(c) It is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained."

(d) Violation of this subsection is a gross misdemeanor, punishable under RCW ~~((77.15.560))~~ 77.15.630.

~~((+14))~~ Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW ~~77.15.640~~.)

NEW SECTION

WAC 220-69-246 Description of Washington state electronic fish receiving ticket. (1) There is hereby created a nontreaty electronic fish receiving ticket. Electronic forms are available to original receivers participating in the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program. The electronic form shall contain space for the following information:

- (a) Fisherman: Name of licensed deliverer and department number assigned to licensed deliverer;
- (b) Address: Address of licensed deliverer;
- (c) Boat name: Name or Coast Guard number of landing vessel;
- (d) WDFW boat registration: Washington department of fish and wildlife boat registration number;
- (e) Gear: Code number or name of specific gear type used;
- (f) Fisherman's signature: Signature of licensed deliverer;
- (g) Date: Date of landing;
- (h) Dealer: Name of dealer and department number assigned to dealer;
- (i) Buyer: Name of buyer and department number assigned to buyer;
- (j) Receiver's signature: Signature of original receiver;
- (k) Number of days fished: Days spent catching fish;
- (l) Catch area: Marine fish/shellfish management and catch reporting area code where the majority of the marine fish were caught or harvested;
- (m) Species code: Department assigned species code;
- (n) Individual numbers of fish species, if such fish are landed as part of an incidental catch allowance or catch ratio restriction that is expressed in numbers of fish rather than in pounds;
- (o) The scale weight of all fish, to include fish with no value. However, if the department allows a species of fish to be dressed, and the fish is dressed as the department requires, such fish can be recorded in its original dressed weight and designated as dressed on the fish receiving ticket;
- (p) Value of fish sold or purchased: Summary information for species, or species groups landed as described in (q) of this subsection;
- (q) Description of species or species category: All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050), and all others must be described with the relevant category or species name issued by the department;
- (r) Federal limited entry permit number granting authority for the delivery. Separate electronic fish receiving tickets are required for each federal sablefish endorsed limited entry permit number used in the delivery;
- (s) All legally defined gear as defined in 50 C.F.R. 660, Subpart D, and WAC 220-44-030, aboard the vessel at the time of delivery;
- (t) Total amount: Total value of landing;
- (u) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use;
- (v) Seized/overage: Species and pounds of fish or shellfish; and

(w) Work area for dealer's use: Used at dealer's discretion.

(2) The electronic fish receiving ticket shall be used exclusively for nontreaty deliveries of fish harvested by participants lawfully involved in the Pacific Coast Groundfish Shoreside IFQ Program described in 50 C.F.R. 660.140.

AMENDATORY SECTION (Amending Order 09-262, filed 12/23/09, effective 1/23/10)

WAC 220-69-250 Required information on nontreaty fish receiving tickets. (1) Except as provided in subsection (5) of this section, it is unlawful for a person required to complete a nontreaty fish receiving ticket to fail to enter the mandatory information referenced in WAC 220-69-230 (1)(a) through (m) and (p) through (x) on each nontreaty fish receiving ticket.

(2) A valid license card or duplicate license card issued by the department shall be used in conjunction with an approved mechanical imprinter in lieu of the requirements in WAC 220-69-230 (1)(a) through (e), except as provided in WAC 220-69-273.

(3) A valid dealer or buyer card issued by the department shall be used in conjunction with an approved mechanical imprinter in lieu of the requirements in WAC 220-69-230 (1)(h) and (i).

(4) During the period December 1 through December 30, the crab inspection certificate number is a required entry on all shellfish receiving tickets documenting landings and sale of Dungeness crab from Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters. The crab inspection certificate number must be entered legibly on the left hand side of the ticket in the space indicated for dealer's use.

(5) Persons selling or receiving deliveries of fish made under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) may use the electronic fish ticket system described in 50 C.F.R. § 660.113 (b)(4)(ii) to enter mandatory information in lieu of completing a nontreaty fish receiving ticket, provided that the following conditions are met:

(a) All information required under WAC 220-69-256 has been entered on the electronic fish receiving ticket;

(b) Both the fisherman and original receiver have signed a legible, printed copy of the original electronic fish receiving ticket, plus all amended copies declaring the document and information contained therein as being true and accurate, and they have submitted such signed copies as prescribed in WAC 220-69-260; and

(c) A signed copy of the electronic fish receiving ticket and all amended copies are maintained by the original receiver at the place of business for a period of three years preceding the date of initiation.

(6) Violation of this section is a gross misdemeanor, punishable under RCW ((~~77.15.640~~)) 77.15.630.

NEW SECTION

WAC 220-69-256 Required information on electronic fish receiving tickets. (1) It is unlawful for a person required to complete a report under WAC 220-69-240 to uti-

lize an electronic fish receiving ticket in lieu of a paper fish receiving ticket unless the mandatory information contained in WAC 220-69-246 (1)(a) through (w) is entered on each electronic fish receiving ticket.

(2) For the purposes of this section, an electronic fish receiving ticket means the ticket defined in WAC 220-69-246.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-69-260 Distribution of copies of nontreaty fish receiving tickets. (1) State of Washington nontreaty fish receiving tickets shall be made out in quadruplicate (four copies) at the time of delivery. Upon completion of the fish receiving ticket, it is unlawful for the person completing the fish receiving ticket to fail to distribute the copies as follows:

~~((1))~~ (a) The dealer copies (white and yellow) shall be retained by the receiver for ~~((their))~~ his or her use.

~~((2))~~ (b) The state copy (green) shall be mailed to the department. It is required that the state copies be received by the department no later than the sixth working day after the day the ticket was completed by the original receiver.

~~((3))~~ (c) Fisher copy (gold) shall be retained by the deliverer for ~~((their))~~ his or her use.

~~((4))~~ (2) It is unlawful for an original receiver to fail to comply with the following provisions:

(a) A signed copy of all electronic fish receiving ticket submissions must be mailed to the department.

(b) The electronic fish receiving tickets must be received by the department no later than the sixth working day after the ticket was completed or amended by the original receiver.

(3) Violation of this section is a gross misdemeanor, punishable under RCW ~~((77.15.640))~~ 77.15.630.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-69-274 Signatures. (1) It is unlawful for the deliverer or original receiver of nontreaty fish or shellfish to fail to sign the complete nontreaty fish receiving ticket ~~((, which signature shall be deemed certification of the correctness of))~~ to certify that all entries ~~((thereon. It is unlawful for the original receiver of nontreaty fish or shellfish to fail to sign the complete nontreaty fish receiving))~~ on the ticket are accurate and correct.

(2) It is unlawful for the deliverer of treaty fish or shellfish to fail to sign the tribal copy of the treaty Indian fish receiving ticket ~~((, which signature shall be deemed certification of the correctness of))~~ to certify that all entries on the ~~((complete fish receiving))~~ ticket are accurate and correct. It is unlawful for the original receiver of treaty food fish or shellfish to fail to sign the ~~((complete))~~ completed treaty Indian fish receiving ticket.

(3) It is unlawful for the deliverer or original receiver of fish caught under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) to fail to print and sign a copy of the completed electronic fish receiving ticket to certify that all entries on the ticket are accurate and correct.

(a) A fisher who fails to sign a fish receiving ticket is in violation of RCW 77.15.560.

(b) An original receiver who fails to sign a fish receiving ticket is in violation of RCW ~~((77.15.640))~~ 77.15.630.

~~((3))~~ (4) Where the fisherman is unable to deliver the catch, an agent of the fisherman is authorized to sign the fish receiving ticket if the ~~((person))~~ agent has first obtained an ~~((additional))~~ alternate operator's license for the fishing vessel operated by the fisherman.

~~((4-Should))~~ (5) If the receiver receives the fish or shellfish by any method other than direct delivery, the receiver shall affix his or her signature to the fish receiving ticket, and the fish receiving ticket shall be completed and submitted without the deliverer's signature and together with the transportation ticket ~~((, and))~~. The receiver shall assume complete responsibility for the correctness of all entries on the fish receiving ticket.

WSR 12-04-031

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed January 26, 2012, 4:08 p.m., effective February 26, 2012]

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

Purpose: Amending WAC 181-85-033 to provide continuing education credits for educators who score the professional certificate assessment.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-85-033].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-23-069 on November 15 [14], 2011.

Changes Other than Editing from Proposed to Adopted Version: For purposes of salary calculation, provides credit hours to teachers successfully completing the ProTeach Portfolio.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: January 26, 2011.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 11-04-048, filed 1/25/11, effective 2/25/11)

WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions. (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-78A-505, members of a professional growth team, excluding the candidate, shall receive the equivalent of ten continuing education credit hours. The team member may not receive more than the equivalent of twenty continuing education credit hours, as defined by this section, during a calendar year period.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of forty-five continuing education credit hours for completion of an assessment process as part of the National Board for Professional Teaching Standards certificate application. Upon achieving National Board certification, the individual shall receive the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per National Board certificate.

(5) Notwithstanding any provisions of this chapter to the contrary, teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 will

receive the equivalent of one hundred fifty continuing education credit hours.

(6) Notwithstanding any provisions of this chapter to the contrary, for designing and completing a professional growth plan under the provisions of WAC 181-85-034, participants shall receive the equivalent of no more than sixty continuing education credit hours over a period of two school years, as defined by this chapter.

(7) Notwithstanding any provision of this chapter to the contrary, individuals who receive in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(8) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours for each four assessments scored, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours.

WSR 12-04-032

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed January 26, 2012, 4:14 p.m., effective February 26, 2012]

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

Purpose: Amends WAC 181-01-002, accepting Oregon state basic skill test for Washington teacher candidates.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-01-002].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-21-052 on October 13, 2011.

Changes Other than Editing from Proposed to Adopted Version: For purposes of salary calculation, provides credit hours to teachers successfully completing the ProTeach Portfolio.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: January 26, 2011.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-084, filed 12/5/06, effective 1/5/07)

WAC 181-01-002 WEST-B exemptions. (1) Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260, or out-of-state candidates applying to masters-degree level teacher preparation programs residing outside of the state of Washington at time of application, in lieu of passing the WEST-B, may provide official documentation of scores on the Praxis I of 177 for the reading subtest, 176 for the mathematics subtest and 174 for the writing subtest, or scores on the Praxis I CBT computer-administered test of 325 for the reading subtest, 321 for the mathematics subtest, and 321 for the writing subtest, or passing scores from California or Oregon on the CBEST or Essential Academic Skills test.

(2) Candidates applying for a Washington state residency or professional teaching certificate under WAC 181-79A-257 (1)(b) who hold a certificate through the National Board for Professional Teaching Standards are exempt from the WEST-B requirement.

WSR 12-04-034
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-11—Filed January 27, 2012, 11:30 a.m., effective February 27, 2012]

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

Purpose: The purpose of the proposal is to update gear rules in the ocean pink shrimp trawl fishery to reduce by-catch. The proposed gear modifications include prohibiting the use of "soft-panel" excluders (also known as biological reduction devices) and reducing the bar spacing allowed on rigid panel excluders from a maximum of two inches to a maximum of three-quarters (0.75) inches. The coastal pink shrimp trawl fishery catches Pacific eulachon smelt (*Thaleichthys pacificus*) as by-catch. In 2010, the National Marine Fisheries Service listed eulachon smelt as a threatened species under the Endangered Species Act (ESA). The proposed rule changes will reduce the catch of this ESA-

listed species in the pink shrimp trawl fishery while maintaining the opportunity to continue to fish for pink shrimp.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-050.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, 77.12.047.

Adopted under notice filed as WSR 11-23-177 on November 23, 2011.

Changes Other than Editing from Proposed to Adopted Version: Subsection (3)(a), deleted the language that specified the space permitted between the exterior of a by-catch reduction device and the trawl net, to not allow any space. Subsection (6), added language to allow trawl gear to be removed from a vessel prior to offloading shrimp as long as the vessel provides advance notification to WDFW enforcement.

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

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

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

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

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

Date Adopted: January 24, 2012.

Philip Anderson
Director

AMENDATORY SECTION (Amending WSR 10-05-059, filed 2/11/10, effective 3/14/10)

WAC 220-52-050 Ocean pink shrimp trawl fishery—Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(3) ~~(It is unlawful to fish with or possess pink shrimp taken with shrimp trawl gear having a net mesh size greater than two inches in the intermediate or codend, except for net mesh used in by-catch reduction devices defined under subsection (4) of this section. However, it is lawful to have net mesh larger than two inches in the wings or body of the trawl.~~

~~(4)) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. A by-catch reduction device, also known as a finfish excluder, uses a rigid panel or grate of narrowly spaced bars to guide fish out of an escape hole forward of the panel, generally in the top of the net. An approved by-catch reduction device~~((s include)) must meet the following criteria:~~~~

~~(a) ((A Soft Panel By-catch Reduction Device, which uses a mesh panel to guide fish out of an escape hole. An approved soft panel must meet the following criteria:~~

~~(i) The panel must completely cover some portion of the net in cross-section, meaning it must extend completely across the full opening of the net in one continuous piece. The panel must be securely fastened to the net around the entire perimeter, such that a 110 mm diameter sphere cannot pass beyond the panel into the terminal end of the codend;~~

~~(ii) The panel meshes must be constructed of netting material with individual meshes no larger than 5.5 inches, measured between opposing knots, and must be constructed of a single panel of continuous netting, without zippers or other devices designed to allow disabling of the panel such that large fish can pass back into the codend;~~

~~(iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and~~

~~(iv) The escape hole must be forward of the mesh panel and must begin within four meshes of the furthest aft point of attachment of the mesh panel to the net.~~

~~(b) A Nordmore Grate By-catch Reduction Device, which uses a rigid panel of narrowly spaced vertical bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. An approved Nordmore grate must meet the following criteria:~~

~~((i)) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net~~((, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend));~~~~

~~((ii)) (b) None of the openings between the~~((vertical)) bars in the rigid panel may exceed~~~~((two))~~ 0.75 inches~~((# width));~~~~

~~((iii)) (c) The escape hole must, when spread open, expose a hole of at least 100 square inches; and~~

~~((iv)) (d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.~~

~~((5) It is unlawful to remove trawl gear from the vessel prior to offloading of shrimp.~~

~~((6)) (4) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except~~((for the purpose of testing the by-catch reduction device to measure shrimp loss.~~~~

Authorized)) as provided by special gear permit as described in subsection (5) of this section.

(5) Testing of by-catch reduction devices~~((must meet the following criteria:~~

~~(a) Testing)) is allowed by special gear permit only, consistent with the terms and conditions of the permit~~((; and~~~~

~~(b) For vessels fishing two nets simultaneously (double-rigged boats), only one net may contain a disabled by-catch reduction device, and the other net must be fishing a fully functional by-catch reduction device as described in subsection (4) of this section)).~~

(6) It is unlawful to remove trawl gear from the vessel prior to offloading shrimp without advance notification to WDFW enforcement. To provide advance notification, contact 360-902-2936, and then press zero when the recording begins.

(7) A violation of subsections ~~((4))~~ (3) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(8) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist of at least one pound each of whole, unbroken shrimp taken at random from throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

(9) It is unlawful to take salmon incidental to any shrimp trawl fishery.

(10) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-44-050.

(11) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

License

(13) An ocean pink shrimp delivery license is required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Permit

(14) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

(15) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750.

WSR 12-04-036
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 27, 2012, 12:01 p.m., effective February 27, 2012]

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

Purpose: Amends WAC 181-78A-270 to specify qualifications for school administrator preparation program standards. Sets skills and knowledge expectations. Deletes sections related to social worker preparation programs that have been deregulated.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-270].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-21-075 on October 18, 2011.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: January 19, 2012.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 11-15-049, filed 7/15/11, effective 8/15/11)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on

the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of language, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) **TEACHING AS A PROFESSION.**

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet

the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(2) **PRINCIPAL AND PROGRAM ADMINISTRATOR.** (a) Effective ((August 31, 1997, through August 31, 2004)) September 1, 2010, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete ((a well-planned sequence of courses and/or experiences)) formalized learning opportunities, including an internship, in an approved ((preparation)) program ((which shall)) that includes:

((i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short term and long term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in

cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensitivities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, includ-

ing current social and economic issues related to education; recognizing global influences on students and society.

~~(S) Legal and regulatory applications:~~ Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

~~(T) Policy and political influences:~~ Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

~~(U) Public and media relationships:~~ Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

~~(ii) Performance assessment.~~ An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

~~(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:~~

~~(i)) Successful demonstration of standards.~~

~~((A)) (i) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;~~

~~((B)) (ii) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;~~

~~((C)) (iii) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;~~

~~((D)) (iv) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse com-~~

munity interests and needs, and mobilizing community resources;

~~((E)) (v) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner; and~~

~~((F)) (vi) A school administrator is an educational leader who promotes has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.~~

~~((ii)) (b) Performance assessment.~~ An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board ~~(and published by the office of the superintendent of public instruction)~~. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) SUPERINTENDENT. An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following standards:

(a) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(b) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who ~~promotes~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the suc-

cess of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) ~~SCHOOL COUNSELOR.~~ ((Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels);

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society);

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes);

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches);

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors);

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements;

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research);

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing);

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

~~(5) SCHOOL COUNSELOR.~~) Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington

state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an

integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

~~((6))~~ (5) **SCHOOL PSYCHOLOGIST.** ~~((Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:~~

~~(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:~~

~~(i) Learning theory.~~

~~(ii) Personality theory and development.~~

~~(iii) Individual and group testing and assessment.~~

~~(iv) Individual and group counseling and interviewing theory and techniques.~~

~~(v) Basic statistics.~~

~~(vi) Child development.~~

~~(vii) Exceptional children.~~

~~(viii) Social and cultural factors.~~

~~(ix) Deviant personality.~~

~~(x) Curriculum, including the state learning goals and essential academic learning requirements.~~

~~(xi) Research design.~~

~~(xii) Physiological and biological factors.~~

(b) ~~Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:~~

- ~~(i) Intellectual and cognitive assessment.~~
- ~~(ii) Individual and group academic skills. Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.~~
- ~~(iii) Personality assessment.~~
- ~~(iv) Assessment of perceptual skills.~~
- ~~(v) Assessment of adaptive behavior; assessment of language skills.~~

~~(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:~~

- ~~(i) Data taking.~~
- ~~(ii) Frequency measures.~~
- ~~(iii) Qualitative and quantitative analysis of classroom behavior.~~

~~(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.~~

~~(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:~~

- ~~(i) Provide individual and group counseling to students and parents.~~
- ~~(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.~~

~~(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.~~

~~(f) Consultation. The candidate has the knowledge and skill to:~~

- ~~(i) Function on multidisciplinary teams in evaluating and placing students.~~
- ~~(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.~~

~~(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.~~

~~(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.~~

- ~~(i) Research. The candidate has knowledge and skill to:~~
 - ~~(i) Evaluate and perform research.~~
 - ~~(ii) Apply school-oriented research.~~
 - ~~(iii) Construct criterion-referenced instruments with reference to such educational decisions as:~~
 - ~~(A) Retention in grade.~~
 - ~~(B) Acceleration and early entrance.~~
 - ~~(C) Early entrance.~~

~~(7) SCHOOL PSYCHOLOGIST.))~~ Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized

learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of

human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

~~((8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:~~

~~(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:~~

~~(i) Values:~~

~~(A) Knowledge of profession including values, skills, and ethics; and~~

~~(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.~~

~~(ii) Human behavior and the social environment.~~

~~(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);~~

~~(B) Systems and organizational theory (e.g., school as a bureaucracy);~~

~~(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;~~

~~(D) Family dynamics and theories of family therapy;~~

~~(E) Human/child growth and development;~~

~~(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;~~

~~(G) Theories of personality; and~~

~~(H) Use of computer technology for social work practice.~~

~~(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:~~

~~(i) Direct practice.~~

~~(A) Referring, developing, and coordinating resources and services in the local education agency and community;~~

~~(B) Knowledge and skills related to families;~~

~~(C) Case management;~~

~~(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;~~

~~(E) Crisis intervention, conflict resolution, stress management and decision-making skills;~~

~~(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;~~

~~(G) Interviewing and counseling students in relation to social personal problems adjudged to be impairing student's ability to learn;~~

~~(H) Family interventions including parent education; referral to resources; family counseling;~~

~~(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;~~

~~(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;~~

~~(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;~~

~~(L) Intervention case planning processes; and~~

~~(M) Career and academic guidance to students in their school to work transitions.~~

~~(ii) Indirect practice.~~

~~(A) Liaison and facilitator between and among home, school and community;~~

~~(B) Collaborate and consult with other educational staff to assure student progress;~~

~~(C) Use computer technology for practice and efficiency;~~

~~(D) Develop strategies for increased parental and community involvement with the school;~~

~~(E) Develop programs of remediation for students and their families;~~

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(e) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

(ii) Evaluate own practice;

(iii) Become consumer of research findings;

(iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **SCHOOL SOCIAL WORKERS.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as vio-

lence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator

~~standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.)~~

WSR 12-04-049

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed January 30, 2012, 9:20 a.m., effective March 1, 2012]

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

Purpose: To update, edit, and clarify the standards of conduct for students, chapter 504-26 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 504-26-100, 504-26-218, 504-26-402, 504-26-405, and 504-26-407.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 11-22-055 on October 31, 2011.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 27, 2012.

Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-100 Composition of conduct and appellate boards. (1) The university conduct board shall be composed of five individuals appointed by the vice-president for student affairs: Two students, two faculty members, and a fifth person, who may be any category of university employee and who shall be named by the vice-president for student affairs as the chairperson of the board.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice-president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees

~~((appointed by the vice-president for student affairs)) or students, provided that the student members have had at least one academic year of service on the university conduct board. Three persons constitute a quorum of the appeals board.~~

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

- (1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized transfer of a file.
- (3) Unauthorized use of computer hardware.
- (4) Use of another individual's identification and/or password.
- (5) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.
- (6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.
- (7) Use of computing facilities and resources to interfere with normal operation of the university computing system.
- (8) Use of computing facilities and resources in violation of any law, including copyright laws.
- (9) Any violation of the university computer use policy found at (~~http://www.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Publishing_Policy.htm~~) http://public.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Communication_Policy.htm

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the following procedures.

(a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the student or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.

(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.

(c) Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

- (a) Terminate the proceeding thereby exonerating the student or students;
- (b) Dismiss the case;
- (c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or
- (d) Refer the matter to the university conduct board pursuant to WAC 504-26-401(3).
- (4) The conduct officer may consider the student's past contacts with the office of student standards and accountability in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.
- (5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

- (a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.
- (b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.
- (c) Loss of privileges. Denial of specified privileges for a designated period of time.
- (d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- (e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.
- (f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).
- (g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.
- (h) Residence hall expulsion. Permanent separation of the student from the residence halls.
- (i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.
- (j) University expulsion. Permanent separation of the student from the university. Also referred to as university dis-

missal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this standards of conduct for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges or administrative approval from a student organization. Services, privileges and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a student conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice-president for student affairs.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) In determining an appropriate sanction for a violation of the standards of conduct for students, a student's or student organization's past contacts with the office of student standards and accountability may be considered.

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as

extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-407 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the complainant or accused student(s) in the manner prescribed in the decision letter containing the university's decision and sanctions. Such appeal must be made within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and make determinations based on the following:

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision shall be personally delivered or mailed via U.S. mail to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available. If the appeal board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the ~~((appeals board))~~ president or designee, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the U.S. mail. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

WSR 12-04-051
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 30, 2012, 9:30 a.m., effective March 1, 2012]

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

Purpose: The department is amending WAC 388-418-0005 and 388-450-0162 to conform to ESSB 5921 and ESHB 2082 by:

- Establishing income means testing for nonparental caregivers receiving child-only TANF grant. The means testing sets an income eligibility threshold of three hundred percent of the federal poverty level (FPL) for nonparental caregivers receiving nonneedy grants and a sliding grant scale when the caregiver's income is between two hundred percent and three hundred percent FPL. Caregivers may lose their child-only TANF benefits if their income is over three hundred percent of the FPL or have their benefits reduced if income falls between two hundred percent and three hundred percent of the FPL. Caregivers receiving child-only TANF for children who were placed by a state or tribal child welfare agency, and whose child welfare case is still active are exempt from mean testing.
- Eliminating reference to general assistance or the disability lifeline and including a reference to aged, blind, or disabled (ABD) assistance program and payment standard established November 1, 2011, through an emergency rule filed October 12, 2011, under WSR 11-21-049.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0005 and 388-450-0162.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: ESSB 5921, chapter 42, Laws of 2011 1st sp. sess.; and ESHB 2082, chapter 36, Laws of 2011 1st sp. sess.

Adopted under notice filed as WSR 11-19-114 on September 21, 2011.

Changes Other than Editing from Proposed to Adopted Version: The department amended:

- WAC 388-418-0005 (1)(c)(iii)(A) to:
 - o Remove reference to WAC 388-478-0030 and general assistance, and
 - o Add new WAC 388-478-033 and reference to ABD cash.
- WAC 388-418-0005 (1)(c)(v) by adding medical care services requirements WAC: "(E) See WAC 182-504-0100 for medical care services reporting requirements."
- WAC 388-450-0162 (4)(a) to remove reference to WAC 388-478-0030 and add new WAC 388-478-0033.

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: January 25, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-02-071, filed 1/5/11, effective 2/5/11)

WAC 388-418-0005 How will I know what changes to report? You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(1) If you receive assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.

(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:

- (i) Residence;
- (ii) Marital status;
- (iii) Living arrangement;
- (iv) Income;
- (v) Resources;
- (vi) Medical expenses; and

(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(b) If you receive **medical benefits based on age, blindness, disability (SSI-related medical), or ADATSA** benefits, you need to tell us if:

- (i) You move;
- (ii) A family member moves into or out of your home;
- (iii) Your resources change; or
- (iv) Your income changes. This includes the income of you, your spouse or your child living with you.

(c) If you receive **cash** benefits, you need to tell us if:

- (i) You move;
- (ii) Someone moves out of your home;
- (iii) Your total gross monthly income goes over the:
 - (A) Payment standard under WAC (~~(388-478-0030)~~ 388-478-0033 if you receive (~~(general assistance)~~ ABD cash; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

- (iv) You have liquid resources more than four thousand dollars; or
- (v) You have a change in employment. Tell us if you:
 - (A) Get a job or change employers;
 - (B) Change from part-time to full-time or full-time to part-time;
 - (C) Have a change in your hourly wage rate or salary;
 - ~~((or))~~
 - (D) Stop working; or
 - (E) See WAC 182-504-0100 for medical care services reporting requirements.

(d) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

- (i) You move;
- (ii) The child you are caring for moves out of the home;
- (iii) ~~((The child's parent moves into your home;~~
- ~~(iv) The))~~ Anyone related to you or to the child you are caring for moves into or out of the home;
- (iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).

(v) There is a change in the recipient child's earned or unearned income (~~(changes)~~) (see WAC 388-450-0070 for how we count the earned income of a child);

~~((+))~~ (vi) The recipient child has liquid resources more than four thousand dollars;

(vii) A recipient child in the home becomes a foster child; or

(viii) You legally adopt the recipient child.

(e) If you receive **family medical** benefits, you need to tell us if:

- (i) You move;
- (ii) A family member moves out of your home; or
- (iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

(2) If you do not receive assistance from any of the programs listed in subsection (1), but you do receive benefits from any of the programs listed in subsection (2), you must report changes for the people in your assistance unit under chapter 388-408 WAC, based on all the benefits you receive.

(a) If you receive **Basic Food** benefits, you need to tell us if:

(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or

(ii) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

(iii) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 ~~((and))~~ has their hours at work go below twenty hours per week.

(b) If you receive **children's medical** benefits, you need to tell us if:

- (i) You move; or
- (ii) A family member moves out of the house.
- (c) If you receive **pregnancy medical** benefits, you need to tell us if:
 - (i) You move; or
 - (ii) You are no longer pregnant.
- (d) If you receive **other medical** benefits, you need to tell us if:
 - (i) You move; or
 - (ii) A family member moves out of the home.

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

| | |
|---|---|
| <u>If your countable child-only means-testing AU income is:</u> | <u>Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:</u> |
| 200% FPL or less | 100% |

| | |
|---|---|
| <u>If your countable child-only means-testing AU income is:</u> | <u>Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:</u> |
| <u>Between 201% and 225% of FPL</u> | <u>80%</u> |
| <u>Between 226% and 250% of FPL</u> | <u>60%</u> |
| <u>Between 251% and 275% of FPL</u> | <u>40%</u> |
| <u>Between 276% and 300% of FPL</u> | <u>20%</u> |
| <u>Over 300% of the FPL</u> | <u>The children in your care are not eligible for a TANF/SFA grant.</u> |

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

(e) If the children in your care do not qualify for a TANF/SFA grant once the child-only means-test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210.

(4) For cash assistance:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and ~~((388-478-0030)) 388-478-0033 or, for child-only means-tested cases, to the payment standard amount in subsection (3) of this section.~~

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

~~((4))~~ **(5) For Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

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

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

WSR 12-04-060

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 30, 2012, 10:47 a.m., effective March 1, 2012]

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

Purpose: SHB 2017, chapter 298, Laws of 2011, transferred responsibility for the master license service (MLS) program from the department of licensing to the department of revenue, effective July 1, 2011. This program is now referred to as the business licensing service (BLS).

This legislation requires that the application and renewal handling fees be established by rule. The department previously adopted an emergency WAC 308-300-160 to establish these fees. The department is now adopting a permanent WAC 308-300-160, and recodifying the rule as WAC 458-20-10101. The fee amounts are the same as reflected in the emergency rule.

Citation of Existing Rules Affected by this Order: Amending WAC 308-300-160 Business licensing service—Total fee payable—Handling of fees.

Statutory Authority for Adoption: SHB 2017, chapter 298, Laws of 2011 and RCW 19.02.075.

Adopted under notice filed as WSR 11-23-180 on November 23, 2011.

A final cost-benefit analysis is available by contacting Roseanna Hodson, Department of Revenue, 1025 Union Avenue S.E., Suite 544, Olympia, WA 98504-7453 USA, phone (360) 534-1580, e-mail RoseannaH@dor.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 30, 2012.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-039, filed 6/8/10, effective 7/9/10)

WAC 308-300-160 Business licensing service—Total fee payable—Handling of fees. (1) **Introduction.** Chapter 298, Laws of 2011, transferred responsibility for the master license service program (MLS) from the department of licensing to the department of revenue, effective July 1, 2011. This program is now referred to as the business licensing service (BLS).

Information about BLS is available on-line at <http://business.wa.gov/BLS>. If you are seeking in-person assistance, you may want to visit:

6500 Linderson Way S.W., Suite 102
Tumwater, WA 98501
8 a.m. to 5 p.m., Monday - Friday
(except state holidays or temporary layoff days)

The department of licensing continues to issue, renew, and regulate professional licenses, see <http://dol.wa.gov/business/>.

(2) What fee do I need to pay when applying for or renewing a license? The fee payable will be the total amount of all individual license fees, late filing fees, other penalty fees, and handling fees, and may include additional fees charged to cover credit or debit card processing. Licensing fees vary depending on the license for which you are applying. Refer to <http://bls.dor.wa.gov/specialty/licenses.aspx> for information about licenses and license fee amounts.

((2)) (3) What does the department do with these fees? The department will distribute the fees received for individual licenses issued or renewed to the appropriate agencies on an established schedule.

((3)) (4) When do I get my business license? The ~~((master))~~ business license will not be issued until the full amount of the total fee payable is collected. When the fee payment received is less than the total fee payable, the department will bill the applicant for the balance.

((4)) (5) Can I get a refund? The ~~((master))~~ business license ~~((service))~~ application and renewal handling fees collected under RCW 19.02.075 are not refundable. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(6) What are the handling fees? The business license application handling fee amounts are:

| Type of handling fee: | Fee amount: |
|--|--------------------|
| <u>Business license application filing</u> | <u>\$15.00</u> |
| <u>License renewal application filing</u> | <u>\$9.00</u> |

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

| | |
|----------------|----------------|
| Old WAC Number | New WAC Number |
| 308-300-160 | 458-20-10101 |

WSR 12-04-061
PERMANENT RULES
BOARD OF

PILOTAGE COMMISSIONERS

[Filed January 30, 2012, 11:01 a.m., effective March 1, 2012]

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

Purpose: To broaden the rule to cover state licensed pilot trainees, in addition to pilots; and to expand the definitions of an "incident" and a "marine safety occurrence."

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-200 Duties of pilots.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 11-24-091 on December 7, 2011.

Changes Other than Editing from Proposed to Adopted Version: There were no changes other than editorial.

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

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

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

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

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

Date Adopted: January 12, 2012.

Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 08-22-003, filed 10/23/08, effective 11/23/08)

WAC 363-116-200 Duties of pilots. (1) In any case where a vessel in the charge of a state licensed pilot or a state licensed pilot trainee is involved in an incident or near-miss occurrence, ~~((said))~~ the pilot and the pilot trainee on the vessel shall make a report to the board in the following required manner:

(a) ~~((Pilot's))~~ *Report of Incident.* A state licensed pilot and a state licensed pilot trainee involved in an incident shall notify the board by telephoning or radioing the Marine Exchange of Puget Sound as soon as the situation is stabilized or within one hour of reaching shore. ~~((The pilot))~~ In addi-

tion, all incidents shall ~~((also complete))~~ be reported to the board ~~((required Pilots))~~ on the *Report of Incident* form ~~((and file it with the board))~~ as soon as possible after the incident, but in no event more than ten days afterwards. If a pilot trainee is involved, both the pilot trainee and the supervising pilot shall file a *Report of Incident*. In any event where a pilot or pilot trainee is unaware of the occurrence of an incident at the conclusion of his/her piloting assignment, the pilot and pilot trainee shall file a *Report of Incident* within ten days of being informed of the occurrence of the incident. An incident includes an actual or apparent collision, allision or grounding, as well as a navigational occurrence which results in actual or apparent personal injury or property damage or environmental damage. An incident also includes any occurrence where a pilot or pilot trainee falls or is injured while embarking or disembarking a vessel or otherwise is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee.

(b) ~~((Pilots))~~ *Report of Marine Safety Occurrence*. A state licensed pilot and state licensed pilot trainee involved in a near-miss occurrence shall complete the board required ~~((Pilots))~~ *Report of Marine Safety Occurrence* form and file it with the board as soon as possible after the near-miss occurrence, but in no event more than ten days afterwards. If a pilot trainee is involved, both the pilot trainee and the supervising pilot shall file a *Report of Marine Safety Occurrence*. A near-miss occurrence is where a pilot and pilot trainee successfully takes action of a nonroutine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damages to the environment. Information relating to near-miss occurrences provided by a pilot and pilot trainee on this form shall not be used for imposing any sanctions or penalties against ~~((said))~~ the pilot or pilot trainee involved in the occurrence. A state licensed pilot or pilot trainee may also use this form on a voluntary basis for reporting out of the ordinary occurrences or concerns for navigational safety encountered or observed during the course of piloting a vessel as well as safety issues encountered or observed on the vessel, the dock, or in the area around the vessel.

(c) Completion of these forms does not replace or relieve a pilot or pilot trainee from any other reporting requirements under federal, state or local law. If circumstances permit, a pilot or pilot trainee will notify the vessel master of his/her intent to file a report of incident or marine safety occurrence with the board. The board shall forward a copy of any form received to the respective shipper or its board representative. The board ~~((of pilotage commissioners))~~ may, with or without a complaint being made against a pilot or pilot trainee, investigate the matter reported upon.

(2) Pilots and pilot trainees will report to the ~~((aids))~~ pilot office and to the aides to navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that ~~((my))~~ may come to their knowledge.

(3) Any pilot or pilot trainee who shall fail, neglect or refuse to make a report to the board ~~((of pilotage commissioners))~~ as required by the pilotage laws of the state, or by these rules and regulations, for a period of ten days after the

date when ~~((said))~~ the report is required to be made, shall be subject to having his/her license suspended at the discretion of the board, and if he/she fails to report for a period of thirty days the board may, at its discretion, revoke his/her license.

(4) Pilots or pilot trainees when so notified in writing shall report in person to the board~~((s))~~ at any meeting specified in such notice.

(5) Any pilot or pilot trainees summoned to testify before the ~~((pilotage))~~ board shall appear in accordance with such summons and shall make answer, under oath, to any question put to him/her which deals with any matter connected with the pilot service, or of the pilotage waters over which he/she is licensed to act. ~~((The pilot))~~ He/she shall be entitled to have his/her attorney or advisor present during any such appearance and testimony.

(6) Any pilot who shall absent himself/herself from his/her pilotage duties or district for a period of sixty days without permission of the board of pilotage commissioners shall be liable to suspension or to the forfeiture of his/her license.

(7) A pilot or pilot trainee on boarding a ship, if required by the master thereof, shall exhibit his/her license, or photo static copy thereof.

(8) When a pilot licensed under this act is employed on an enrolled ship, the same rules and regulations shall apply as pertain to registered ships.

(9) Any state licensed pilot or pilot trainee assigned to pilot a vessel entering, leaving, or shifting berths under its own power in any of the waters subject to the provisions of chapter 88.16 RCW shall before assuming pilotage obligations for such vessel obtain assurance from the master that the vessel meets all requirements for safe navigation and maneuvering. In addition, the pilot or pilot trainee shall obtain assurance that the ship's officers will maintain navigation procedures by all navigational aids available to insure that the vessel's position is known at all times. If the pilot or pilot trainee in his/her professional judgment considers the vessel to be incapable of safe navigation and maneuvering due to performance limitations, he/she shall refuse to assume the obligations of pilotage for such vessel until such limitations have been corrected and shall promptly notify the pilot's control station and the chairman of the board of pilotage commissioners of such action.

(10) In providing pilotage services under chapter 88.16 RCW every pilot and pilot trainee shall perform those duties in a professional manner and without negligence so as to not endanger life, limb or property, not violate or not fail to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

(11) A pilot involved in a serious marine incident as that term is defined in 46 CFR 4.03-2 shall, in addition to meeting all requirements imposed by federal law:

(a) To the extent practicable and safe, stabilize the vessel and request relief by the dispatching of another pilot; and

(b) As soon as the relief pilot arrives, transfer the con of the vessel to the new pilot; such that the pilot and any pilot trainee involved in the incident may meet the requirements of 46 CFR Part 4.06.

WSR 12-04-062**PERMANENT RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed January 30, 2012, 11:41 a.m., effective March 1, 2012]

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

Purpose: Repealing WAC 172-122-100 Civil demonstrations. This rule is obsolete. University response to civil demonstrations is governed by state law and internal university policies.

Citation of Existing Rules Affected by this Order: Repealing WAC 172-122-100.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 11-24-069 on December 6, 2011.

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

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

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

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

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

Date Adopted: January 27, 2012.

Trent Lutey
University Policy Administrator

WSR 12-04-063**PERMANENT RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed January 30, 2012, 11:42 a.m., effective March 1, 2012]

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

Purpose: Repealing WAC 172-122-500 Posters. This rule is obsolete. Agency regulations relative to posters are contained in other university rules and policies.

Citation of Existing Rules Affected by this Order: Repealing WAC 172-122-500.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 11-24-070 on December 6, 2011.

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

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

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

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

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

Date Adopted: January 27, 2012.

Trent Lutey
University Policy Administrator

WSR 12-04-064**PERMANENT RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed January 30, 2012, 11:43 a.m., effective March 1, 2012]

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

Purpose: Repealing WAC 172-139-030 Handbills. This rule is obsolete. Agency regulations relative to handbills are contained in other university rules and policies.

Citation of Existing Rules Affected by this Order: Repealing WAC 172-139-030.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 11-24-071 on December 6, 2011.

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

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

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

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

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

Date Adopted: January 27, 2012.

Trent Lutey
University Policy Administrator

WSR 12-04-065**PERMANENT RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed January 30, 2012, 11:43 a.m., effective March 1, 2012]

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

Purpose: Creating chapter 172-137 WAC, Use of university facilities. These rules are needed to establish standard requirements and procedures for the use of Eastern Washing-

ton University (EWU) facilities by persons or organizations, internal or external. These rules also provide for the use of EWU facilities for the exercise of free speech and other First Amendment protected activities.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 11-24-068 on December 6, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 9, 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 9, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2012.

Trent Lutey
University Policy Administrator

Chapter 172-137 WAC

USE OF UNIVERSITY FACILITIES

NEW SECTION

WAC 172-137-010 Purpose. Eastern Washington University is an educational institution established and maintained by the citizens of Washington state in order to carry out the mission of teaching, research and public service. University facilities exist for the primary purpose of supporting that mission and related educational activities.

The university may also permit the use of facilities for other purposes so long as the use does not interfere with university activities. In such cases, the university may impose reasonable conditions on the time, place and manner in which facilities are used.

This chapter establishes standards and procedures for use of university facilities by individuals and entities other than the university itself, including university employees, students, and registered student organizations, as well as individuals and groups that are not related to or affiliated with the university.

NEW SECTION

WAC 172-137-020 Definitions. (1) "Facility" or "facilities" includes all buildings and grounds owned or controlled by the university and the streets, sidewalks, malls, parking lots, and roadways within the boundaries of property owned or controlled by the university. Specific rules also apply to

parking lots, recreational equipment, and commercial activities (chapters 172-116, 172-118, and 172-139 WAC).

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

(3) "Nonuniversity groups" are groups that are neither a university group nor a university affiliate. Nonuniversity groups include employee union organizations, businesses, nonprofit organizations, and individuals who are not currently enrolled students, current university employees, or employees of a university affiliate.

(4) "University affiliates" are external entities that have formal relationships with the university, including: The EWU Foundation, the EWU Alumni Association, and the office of the attorney general. University affiliates also includes the officers, agents, and employees of such an entity.

(5) "University groups" include: The ASEWU, student groups that are officially recognized by the ASEWU, the faculty organization, the academic senate, and any other group that is formally recognized by the university as a group that is directly associated with and a part of the university organization. University group also includes individual members of these groups when acting on behalf of the group, as well as currently enrolled students and current employees.

(6) "Use of facilities" includes the holding of any event or forum, the posting of signs, all forms of advertising, commercial solicitation or the conduct of other commercial activities, the distribution of pamphlets or similar written materials, and the charitable solicitation or the conduct of other charitable activities on or using university facilities.

NEW SECTION

WAC 172-137-030 University priority. First priority for the use of campus facilities shall be given to regularly scheduled university activities. Additionally, use of university facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public. In reviewing conflicting requests to use university facilities, primary consideration is given to activities specifically related to the university's mission.

NEW SECTION

WAC 172-137-035 Delegated responsibility. The board of trustees has delegated to the president of the university the authority to regulate the use of university facilities. Under this authority, the president has delegated to the vice-president for business and finance (VP-BF) the authority to review the use of university facilities; to establish within the framework of this policy guidelines and procedures govern-

ing the use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate.

NEW SECTION

WAC 172-137-040 Conditions of use. (1) Restriction of access. The president of Eastern Washington University may restrict access to university facilities and may establish rules of conduct for persons while on university facilities, as prescribed under WAC 172-122-210.

(2) **No disruption to normal activities.** University facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

(3) **Sound amplification.** The use of electronic sound amplification is permitted in facilities designated by the VP-BF or designee. Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of university affairs. Sound amplification equipment is not permitted within the university's public forum areas. Use of sound amplification equipment must comply with all local ordinances.

(4) **Overnight use.**

(a) No person may use university facilities to camp, except as provided in subsection (b) of this section. "Camp" means to remain overnight, to erect a tent or other shelter, to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) Exceptions:

(i) The use and occupancy of university housing in accordance with housing rules;

(ii) The use of facilities by a university employee or agent who remains overnight to fulfill the responsibilities of his or her position;

(iii) The use of facilities by a university student who remains overnight to fulfill the responsibilities of his or her course of study;

(iv) The use of facilities where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university, such as during home football games, commencement, and special weekends.

(5) **Prohibited users.** The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. secs. 12132 and 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where the organizations have been exempted from provisions of applicable state or federal laws or regulations.

(6) **Demands on university resources.** University facilities may not be used where the use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); except that the use of public forum areas for a first amendment activity may not be halted simply because the event may require additional university security or police costs.

(7) **Prohibited items and authority to inspect.** Within the limits of applicable laws, Eastern Washington University is committed to establishing and maintaining safe conditions for persons attending events in university facilities. Accordingly, some events have restrictions on items that may be brought into the event (i.e., beverage containers, noisemakers). Individuals possessing such items will not be admitted to, or will be removed from, university facilities until the items have been properly removed, discarded, or stored. All persons entering events at university facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(8) **Violations and trespass.** Individuals who violate the university's use of facilities rules and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities.

Under WAC 172-122-200, the university president, or designee, may prohibit access to university facilities, give notice against trespass, and/or order any person or group to leave university facilities.

Failure to comply with a request to leave university property could subject the individuals to arrest and criminal prosecution under the provisions of WAC 172-122-200 and other applicable state, county, and city laws.

(9) **Safety and liability.**

(a) Users must comply with all applicable university policies, procedures, rules and regulations; local, state and federal laws; and fire, health and safety regulations, to include any special regulations specified for the event by the university and/or government authorities.

(b) Users assume full responsibility for any loss, damage or claims arising out of the use.

(c) University facilities may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, or invitees.

(d) University facilities may not be used in any manner that creates a hazard or results in damage to university facilities.

(e) Users shall complete a risk assessment as required or directed by the event planning office.

(f) University facilities may not be used in furtherance of or in connection with illegal activity.

(g) Users are responsible for the appropriate care of facilities being used. Facilities may be inspected by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization

for the costs of extraordinary cleanup or for the repair of damaged property.

(h) When the event involves physical activity, the serving of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least one million dollars per occurrence must be provided to the VP-BF/designee before approval for the requested use will be granted.

NEW SECTION

WAC 172-137-050 Authorized and prohibited uses.

(1) **Public forum/free speech areas.** Use of university facilities for first amendment/free speech activities is governed by the rules set forth in WAC 172-137-080.

(2) **Private or commercial activities.**

(a) University facilities may not be used for private or commercial gain, including: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except as allowed under chapter 172-139 WAC or in the following cases:

(i) By special permission granted by the university president, or designee, if an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity; or

(ii) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at university events;

(b) University facilities may not be used by faculty or staff in connection with compensated outside service, except that faculty or staff may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may other private citizens.

(c) Commercial advertising and/or solicitation which is deceptive or concerns an illegal product or service is prohibited on university facilities.

(3) **Political activities.** University facilities may be used for political activities when such use complies with chapter 42.52 RCW, Ethics in public service. Permitted activities may include:

(a) University departments, student government organizations, or registered student organizations may sponsor candidate forums as well as issue forums regarding ballot propositions;

(b) Candidates for office and proponents or opponents of ballot propositions may rent university facilities on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(c) Candidates for office and proponents or opponents of ballot propositions may use public forum areas, to the same extent and on the same basis as may other individuals or groups; and

(d) A registered student organization may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 172-137-070.

(e) Restrictions:

(i) When an event under this section involves the rental of a university facility, the full rental cost of the facility must be paid and state funds may not be used to pay rental costs or any other costs associated with the event.

(ii) University facilities may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(iii) All candidates who have filed for office for a given position, regardless of party affiliation, must be given equal access to the use of facilities within a reasonable time.

(iv) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(v) Use of university facilities for political activities, as described in this section, must have prior approval of the vice-president for business and finance or designee.

EXCEPTION: Use of public forum areas for first amendment activities does not require VP-BF/designee approval but must comply with all other applicable requirements of this chapter.

(4) **Charitable organization use.** University facilities may be used to benefit a charitable organization when such use complies with chapter 42.52 RCW, Ethics in public service. Examples of permitted use include, but are not limited to, the following:

(a) Charities that are licensed in the state of Washington may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may private citizens;

(b) Charities that are licensed in the state of Washington may use facilities without charge by special permission granted by the university president, or designee, or the vice-president for business and finance where the university has determined that the charitable activity or use will serve an educational or public service purpose related to the university's mission; and

(c) Student government organizations, registered student organizations, and university units that have followed university policies and procedures to conduct fund-raising activities and have adhered to all scheduling requirements and other university policies.

NEW SECTION

WAC 172-137-060 Solicitation, visual displays and advertising. (1) Solicitation, handbills, pamphlets, and similar materials.

(a) Solicitation, or distribution of handbills, pamphlets, and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where the solicitation or distribution would significantly impinge upon the primary business being conducted.

(b) No person shall place in or on any vehicle parked on the university campus, any solicitation devices.

(c) For the purposes of this chapter, the following definition applies: A "solicitation device" is any printed or written matter, sample, or device which:

(i) Advertises for sale any merchandise, product, service, or commodity; or

(ii) Directs attention, either directly or indirectly, to any business or mercantile or commercial establishment, or other activity, for the purpose of promoting an interest in sales or use; or

(iii) Directs attention to or advertises any meeting, performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.

(2) **Signs, posters, and visual displays.** To ensure that goals and objectives relating to the appearance of the campus are maintained, the university regulates the content, location, dimensions, and period of display time of posted materials. Posters must be approved by PUB administration, in accordance with university policy, prior to their placement in any campus location. Specific regulations are available to the public in the PUB administration office.

NEW SECTION

WAC 172-137-070 Procedures for other than first amendment/free speech activities. This section prescribes procedures for the use of university facilities, by individuals and entities other than the university itself, for other than first amendment/freedom of expression activities.

(1) Scheduling and reservation practices.

(a) The primary purpose of university facilities is to serve the university's instructional, research, and public service activities. However, designated facilities, when not required for scheduled university use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions.

(b) No university facilities may be used by individuals or groups unless the facilities, including buildings, equipment, and land, have been reserved as required under this section.

(c) The VP-BF/designee may deny a request to use university facilities when it is determined that the use would violate any of the limitations set forth in this chapter or where the requestor is unwilling to comply with university requirements for the use of facilities, as authorized by these rules.

(2) **Requests.** Requests for use of university facilities must be directed to the event planning office.

(3) Approval authority.

(a) University groups may use university facilities to hold events for faculty, staff, and students without sponsorship by an academic or administrative unit, or approval by the VP-BF/designee, so long as the use complies with this policy and the policies of the specific facilities involved.

(b) University groups may use university facilities to hold events to which the general public is invited when the event is sponsored by an academic or administrative unit and approved by the VP-BF or designee.

(c) All requests for the use of university facilities by university affiliates or nonuniversity groups, whether sponsored or not, must be approved by the VP-BF or designee.

(4) Facility rental/use fees.

(a) The university assesses fees based upon the actual cost, direct and indirect, of using a university facility. Fees for the use of most facilities are set forth on a schedule available on the event planning office web site. The university reserves the right to make changes to fees without prior written notice, except that fee changes do not apply to facility use agreements already approved by the university.

(b) In the event that the fee for the use of a particular facility has not been placed on the schedule, and if the university determines to allow the use of the facility, the university will assess a fee based upon the full cost, direct and indirect, of using the facility.

(c) Student government organizations and registered student organizations may be allowed to use space in many university facilities at no charge or at a reduced rate. The fees charged to student government and registered student organizations for facilities are available through the event planning office.

NEW SECTION

WAC 172-137-080 Facility use rules for first amendment/free speech activities. (1) Purpose. Freedom of expression is a highly valued and indispensable quality of university life. The university commitment to this ideal does not, however, grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the university's buildings, facilities and grounds are dedicated. The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of the university's public forum areas. It is intended to balance the university's responsibility to fulfill its mission as a state educational institution of Washington with the interests of individuals or groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression.

(2) **Policy.** Subject to all other applicable regulations and requirements of this chapter, individuals and/or groups may use the university's public forum areas for those activities protected by the first amendment.

(3) **Conflict with university events.** The university's public forum areas may not be used on the same date as any previously scheduled university event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than one hundred people will attend the university event or activity.

(4) **Public forum areas.** Public forum areas are those areas of each campus that the university has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place, and manner restrictions.

(a) At the Cheney campus, the designated public forum areas are:

(i) Southeast Mall: Outside the Cheney Normal School Heritage Center (one room schoolhouse), on the west side of the building;

(ii) Northeast PUB: Outside the Pence Union Building, on the northeast side of the building; and

(iii) The public sidewalks adjacent to public roads.

(b) A map, identifying the specific boundaries of the public forum areas, is available in the office of event planning.

(c) At the Riverpoint campus, public forum areas are designated by Washington State University under chapter 504-33 WAC.

(d) At the Bellevue campus, public forum areas are designated and managed by Bellevue College under chapter 132H-142 WAC.

(e) In addition to the public forum areas identified herein, the university president may designate additional areas of the campus as public forums.

(5) Duration of use.

(a) University groups may use public forum areas for not more than eight hours per day and for no more than five days during any three-week period.

(b) University affiliates and nonuniversity groups may use public forum areas for not more than five hours per day and for no more than three days during any three-week period.

(c) These limitations upon the duration of use will be excused, on a day-to-day basis, upon request when there are no competing requests to use the area and when the use will not conflict or interfere with activities scheduled within the immediate vicinity of the public forum area.

(6) **Utility connections.** The university will not provide utility connections, including power, telephone, and data.

(7) **Grant of license.** The university president or designee, or any university vice-president or designee may authorize first amendment activities which are reasonably determined not to disrupt university activities, despite a literal violation of this policy statement. Such determinations will be made without consideration of the content or message of the first amendment activities.

(8) **Termination of license.** The university president or designee, or any university vice-president or designee may, at any time, terminate, cancel or prohibit the use of facilities if the event is disrupting normal university functions. Any of these individuals may refuse to allow a proposed use of facilities if they determine, after reasonable inquiry, that the use or event cannot be conducted without disrupting normal university functions. Such determinations will be made without consideration of the content or message of the first amendment activities.

(9) **Procedures - Notice for use of public forum area.** Individuals or groups who desire to use a public forum area for those activities protected by the first amendment, must provide notice to the university. Notice shall be provided to the event planning office no later than fourteen calendar days in advance of use of the public forum area. However, events may be permitted with less notice so long as the event does not interfere with any other function. The notice to use a public forum area must contain:

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

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

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

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

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

**WSR 12-04-076
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed January 31, 2012, 10:55 a.m., effective March 1, 2012]

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

Purpose: Amend the registration program to clarify when and how rock crushing operations must register with this agency.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 5.03 (Applicability of Registration Program); and adopt Section 5.12 (Registration of Crushing Operations).

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-22-106 on November 2, 2011.

Changes Other than Editing from Proposed to Adopted Version: None. Added clarification for moving registration to another site at Regulation I, Section 5.12 (b)(3).

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: January 26, 2012.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on

roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHH-HHH, WWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinyl ester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Crushing operations subject to Section 9.18 ((Reserved)); or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥ 4 " diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥ 10 " diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥ 27 " diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills;

(O) Wood preserving lines or retorts; or

(P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

- (1) Motor vehicles;
- (2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;
- (3) Sources that require an operating permit under Article 7 of this regulation;
- (4) Solid fuel burning devices subject to Article 13 of this regulation; or
- (5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

NEW SECTION

REGULATION I, SECTION 5.12 REGISTRATION OF CRUSHING OPERATIONS

(a) Applicability - This section applies to all crushing operations subject to registration under Section 5.03 of this regulation. Every site which has crushing equipment installed for operation shall be registered with this Agency prior to any crushing operation.

(b) Initial Registration

(1) New crushing operations shall be registered with this agency prior to operation commencing through submittal of the crushing operation information specified on registration forms provided by the agency. All information on the registration form shall be provided as specified. Incomplete registration form submittals will not be acceptable to create an active registration.

(2) Registration is not completed until all fees due are paid, as identified in Section 5.12 (c)(3) of this regulation.

(3) The valid registration of an existing crushing operation may be moved to another site without a new registration, provided that no other operable crushing equipment installed for active operation on a site is using that same registration.

(c) Fees

(1) Registration fees for crushing operations shall be assessed as identified in Section 5.07 of this regulation.

(A) Registered crushing operations may maintain registration through payment of the annual invoices sent to actively registered sources.

(B) Initial registration of a crushing operation shall be subject to the fees identified in Section 5.07 of this regulation. There is no proration of fees for registration of crushing operations that are less than a full year. Registration fees in Section 5.07 (and as identified on the forms provided by the

Agency) shall be submitted with the initial registration. Inapplicable federal emission standard fees identified in Section 5.07 (c)(1) of this regulation will be refunded, as determined through review of the registration submittal.

(2) Unregistered crushing operations at a site are subject to the penalty provisions identified in Section 5.07(b).

(d) Operational Information - The owner or operation of a crushing operation shall maintain records of sites and dates crushing occurred in this Agency's jurisdiction. All records must be current, retained for at least 2 years, and available to Agency representatives upon request.

WSR 12-04-077 PERMANENT RULES PUGET SOUND CLEAN AIR AGENCY

[Filed January 31, 2012, 10:55 a.m., effective March 2, 2012]

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

Purpose: Amend the notice of construction (NOC) program to exempt rock crushing operations from preconstruction review.

Citation of Existing Rules Affected by this Order: Amending Regulation I (Amend Regulation I, Section 6.03 (Notice of Construction)).

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-22-108 on November 2, 2011.

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

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

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

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

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

Date Adopted: January 26, 2012.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) (~~and Subpart OOO (Nonmetallic Mineral Processing Plants)~~) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWW-WWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferroalloys Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any person to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency;

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of $\geq 1,001$ gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity $\geq 40,000$ gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, (~~rock (or concrete) crushers;~~) and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ$ F, and cleaning solvents with a vapor pressure ≤ 25 mm Hg or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for reverse-air or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for mechanical or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity $\leq 1,000$ pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤ 450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity $\leq 1,000$ pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤ 50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or $\leq 12\%$ hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hogggers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of $\leq 1\%$ by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point $>100^{\circ}\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $<1\%$ VOC by weight and $<0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or $<10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $<20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $\leq 40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F ; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring $>1,000$ gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains $<1\%$ VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains $<1\%$ VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\leq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable nonmetallic mineral processing plants (~~((sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour)).~~

(113) Fixed nonmetallic mineral processing plants (~~((sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour)).~~

(114) (Reserved) (~~((Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour)).~~

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤ 2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce < 1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

WSR 12-04-078
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed January 31, 2012, 10:55 a.m., effective March 2, 2012]

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

Purpose: Provide emission performance standards that apply to all rock crushing operations.

Citation of Existing Rules Affected by this Order: Amending Adopt Regulation I, Section 9.18 (Crushing Operations).

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-22-109 on November 2, 2011.

Changes Other than Editing from Proposed to Adopted Version: None. Provided definition for "Control Equipment" at Regulation I, Section 9.18 (b)(4).

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: January 26, 2012.

Craig Kenworthy
Executive Director

NEW SECTION**REGULATION I, SECTION 9.18 CRUSHING OPERATIONS**

(a) This section shall apply to all equipment processing nonmetallic minerals located at a source crushing nonmetallic minerals as defined in 40 CFR 60.671.

(b) General Requirements. It shall be unlawful for any person subject to the provisions of this section to cause or allow the emission of any air contaminant in excess of the following emission limits:

(1) The visible emission limits in (A), (B), and (C) are applicable for any period or periods aggregating more than 3 minutes in any one hour.

(A) Each grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station with operating control equipment shall not exhibit greater than 7 percent opacity.

(B) Each crusher with operating control equipment shall not exhibit greater than 12 percent opacity.

(C) Each crusher, grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station exhausting particulate through a stack equipped with an operating fabric filter or operating wet scrubber exhaust shall not exhibit greater than 7 percent opacity.

(2) Each crusher, grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station exhausting particulate through a stack shall meet a particulate matter limit of 0.01 grains per dry standard cubic foot of exhaust as measured by EPA Method 5.

(3) Each crusher, grinding mill, screening operation, bucket elevator, transfer point on a conveyor belt, bagging operation, storage bin, enclosed truck or railcar loading station without operating control equipment shall not exhibit visible emissions.

(4) For the purpose of this section, "Control Equipment" shall mean either fabric filter, wet scrubber, water sprays, or other dust suppression techniques which effectively reduce visible emissions from the emission units observed.

(c) Testing conducted to verify compliance with the requirements of this section shall be performed in accordance with the Puget Sound Clean Air Agency Regulation I, Section 3.07.

(d) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Sections 9.03, 9.11, 9.15 and all other applicable regulations including those of other agencies.

WSR 12-04-082
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-10—Filed January 31, 2012,
2:17 p.m., effective March 2, 2012]

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

Purpose: Chapter 31, Laws of 2011 (HB 1694) amended RCW 48.15.040 and 48.15.090 to comply with a portion of the Dodd-Frank Wall Street Reform Act. Also, these amendments changed the affidavit of due diligence to a certification. This rule amends the existing rules to comport with these statutory changes and makes clear that the payment of premium taxes is based upon the year in which the surplus line business was transacted, not when the surplus line broker files the certification of due diligence.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-15-090; and amending WAC 284-15-020, 284-15-030, and 284-15-050.

Statutory Authority for Adoption: RCW 48.02.060, 48.15.040(4), and 48.15.090(2).

Adopted under notice filed as WSR 12-01-107 on December 21, 2011.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 1; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 3, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 3, Repealed 1.

Date Adopted: January 31, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-020 Surplus line broker—Solvent insurer required. (1) A surplus line broker must not knowingly place surplus line insurance with financially unsound

insurers. Foreign ~~((and alien))~~ insurers must meet or exceed the minimum financial and other conditions required by RCW 48.15.090 ~~((and WAC 284-15-090))~~.

(2) A surplus line broker must substantiate the financial condition of ~~((an))~~ a foreign unauthorized insurer before placing insurance with the insurer. The broker must also maintain evidence of the financial condition of the insurer for at least five years.

~~((a-f))~~ (3) A surplus line broker may place~~(s))~~ insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers ~~((dated within three months after placement of the risk, it will be deemed that the insurer meets the financial requirements of RCW 48.15.090 and WAC 284-15-090 and that the financial condition of the insurer is)).~~ The financial condition of an insurer named on the listing is deemed to be adequately documented.

~~((b))~~ If a surplus line broker places insurance with an alien unauthorized insurer that is not shown on the NAIC Quarterly Listing of Alien Insurers, the broker must maintain information for at least five years adequate to show that the requirements of subsection (1) of this section have been met or exceeded. This documentation shall include at least the following:

(i) A copy of the unauthorized insurer's most recent available annual financial statement, in English with United States dollar equivalents;

(ii) Any other information obtained by the broker that verifies the financial condition of the alien unauthorized insurer; and

(iii) The current NAIC annual statement or its equivalent on file for any alien unauthorized insurer used.)

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-15-030 Surplus line brokers' form to be filed—Contract ~~((stamp))~~ statement to be used. (1) ~~((RCW 48.15.040 requires that a surplus line broker execute an affidavit at the time of procuring insurance from an unauthorized insurer, and to file such affidavit with the commissioner within thirty days after the insurance is procured.))~~ For the purpose of complying with the requirements of RCW 48.15.043 and 48.15.040, the date insurance is procured is the date coverage is bound or the date coverage is effective, whichever is later. The ~~((form for filing such affidavit shall))~~ certification required by RCW 48.15.040 must be in substantially the following form, and may include additional information to satisfy requirements of the Surplus Line Association of Washington:

| | |
|---------------------------|------------------------------------|
| Policy or Certificate No: | Premium, including any policy fee: |
|---------------------------|------------------------------------|

1. Name and license number of filing Surplus Line Broker:
2. Name and address of ~~((producing agent or broker))~~ referring insurance producer (if any):
3. Name(s) of unauthorized insurer(s):
4. Name and address of insured:

- 5. Binding or effective date, whichever is later:
- 6. Brief statement of coverages (common trade terms may be used, e.g. "furrier's block"):

((STATE OF WASHINGTON }
)
 COUNTY } SS: SURPLUS LINE
 } BROKER'S
 } AFFIDAVIT))

7. Certification:

I have procured insurance from an unauthorized insurer or insurers, in accordance with the laws and regulations of the state of Washington under my surplus line broker's license. Details of such transaction are set forth above.

~~((Such))~~ The insurance could not be procured, after diligent effort was made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state, and placing the insurance in such unauthorized insurer(s) was not done for the purpose of securing a lower premium rate than would be accepted by any authorized insurer.

I certify that I am duly authorized to place this coverage on behalf of the insured, that the risk has been duly accepted by the insurer(s), and that ~~((I ascertained))~~ the financial condition of the unauthorized insurer(s) before placing the insurance therewith meets or exceeds the financial requirements provided by law.

I certify that under the penalty of the suspension or revocation of my surplus line broker's license that the facts contained in this certification are true and correct.

.....
 (Signature of Surplus Line Broker)

((~~Subscribed and sworn to before me this~~ day
of , 20...)

.....
 Notary Public in and for the State of Washing-
 ton, residing at) (Date)

(2) Every insurance contract, including those evidenced by a binder, procured and delivered on or after January 1, 2012, as a surplus line coverage ~~((pursuant to))~~ under chapter 48.15 RCW ~~((shall))~~ must have a conspicuous statement ~~((stamped))~~ upon its face, which ~~((shall))~~ must be initialed by or bear the name of the surplus line broker who procured it, as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, ~~((enacted in 1947))~~ Title 48 RCW. It is not ~~((issued by a company regulated by the Washington state insurance commissioner and is not))~~ protected by any Washington state guaranty ~~((fund))~~ association law."

(3) Every insurance contract, including those evidenced by a binder, procured and delivered on or before December 31, 2011, as a surplus line coverage under chapter 48.15 RCW must have a conspicuous statement upon its face, which must be initialed by or bear the name of the surplus

line broker who procured it, either as set forth in subsection (2) of this section, or as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947. It is not issued by a company regulated by the Washington state insurance commissioner and is not protected by any Washington state guaranty fund law."

NEW SECTION

WAC 284-15-035 Exempt commercial purchasers. A surplus line broker who has procured insurance with an unauthorized insurer for an exempt commercial purchaser must file with the commissioner within sixty days of the procurement (binding or effective date, whichever is later) of the insurance a report of the insurance. The report must be in a format acceptable to the commissioner. The report must include the following information:

- (1) Policy or certificate number;
- (2) Premium, including any policy fee;
- (3) Name and license number of the filing surplus line broker;
- (4) Name and address of referring insurance producer (if any);
- (5) Name(s) of unauthorized insurer(s);
- (6) Name and address of insured;
- (7) Binding or effective date, whichever is later;
- (8) Brief statement of coverages (common terms may be used); and
- (9) Other information as required by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-050 Surplus line—Waiver of financial requirements. (1) The commissioner may waive the financial requirements specified in RCW 48.15.090 ~~((and WAC 284-15-090))~~ in circumstances where insurance cannot be otherwise procured on risks located in this state. Except as set forth in ~~((e))~~ of this subsection ~~((of this section))~~, at least the following information must be submitted when a surplus line broker requests the commissioner to waive the financial requirements:

- ~~((1))~~ (a) A detailed letter explaining the need to waive the financial requirements;
- ~~((2))~~ (b) Documentation of the financial condition of the proposed insurer as reported in its annual statement as of the end of the preceding calendar year;
- ~~((3))~~ (c) Summary information showing the number of years the company has been writing the specific line of insurance;
- ~~((4))~~ (d) A written ~~((acknowledgement))~~ acknowledgment signed by the proposed insured confirming all of the following:
 - ~~((a))~~ (i) The insured has been informed that the coverage will be issued by an insurer (or insurers) that is not an authorized insurer in the state of Washington;
 - ~~((b))~~ (ii) The insured understands that financial requirements for surplus line insurers must be waived by all parties concerned to enable this coverage to be obtained; and

~~((e))~~ (iii) The insured understands that there is no protection for the insured under the Washington Insurance Guaranty Association because the coverage will be issued by an unauthorized insurer;

~~((5))~~ (e) For accounts requiring a multiplicity of insurers, in lieu of the requirements in ~~((subsections (2)))~~ (b) and ~~((3))~~ (c) of this ~~((section))~~ subsection, the commissioner may accept certification from a surplus line broker that the broker has investigated the financial condition of the prospective insurers and is satisfied that they are capable of underwriting the specified risks. Records and documents supporting the broker's certification must be maintained by the broker for the term of the policies and as long thereafter as a claim may be litigated, but in no case less than five years after completion of the transaction.

(2) In no event will the commissioner waive the financial requirements when the insurer's capital and surplus is less than four million five hundred thousand dollars.

NEW SECTION

WAC 284-15-110 Surplus line insurance premium tax. RCW 48.15.120 requires that surplus line brokers must, by the first day of March, remit to the state treasurer through the commissioner a premium tax on surplus line insurance transacted by the surplus line broker during the preceding calendar year. The date the insurance was transacted is the date coverage is bound or the date coverage is effective, whichever is later.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|----------------|---|
| WAC 284-15-090 | Financial requirements for unauthorized foreign and alien insurers increased. |
|----------------|---|