

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

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

Effective Date of Rule: June 1, 2012.

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

Amending WAC 388-273-0020 Who may receive WTAP?, 388-406-0005 Can I apply for cash, medical, or Basic Food?, 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed?, 388-406-0055 When do my benefits start?, 388-408-0005 What is a cash assistance unit?, 388-416-0010 Medical certification periods for recipients of cash assistance programs, 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicaid, and CHIP, 388-424-0015 Immigrant eligibility restrictions for the state family assistance, general assistance, and ADATSA programs, 388-436-0030 Eligibility for CEAP depends on other possible cash benefits, 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?, 388-450-0040 Native American benefits and payments, 388-450-0045 How do we count income from employment and training programs?, 388-450-0095 Allocating income—General, 388-450-0100 Allocating income—Definitions, 388-450-0115 Allocating the income of a financially responsible person excluded from the assistance unit, 388-450-0120 Allocating the income of financially responsible parents to a pregnant or parenting minor, 388-450-0130 Allocating the income of a nonapplying spouse to a caretaker relative, 388-450-0156 When am I exempt from deeming?, 388-450-0170 TANF/SFA earned income incentive and deduction, 388-460-0020 Who is a protective payee?, 388-460-0040 When is a protective payee assigned to TANF/SFA pregnant or parenting minors?, 388-468-0005 Residency, 388-473-0010 What are ongoing additional requirements and how do I qualify?, 388-474-0010 How does being a Supplemental Security Income (SSI) client affect your cash assistance eligibility?, 388-474-0020 What can a general assistance-unemployable (GA-U) client expect when supplemental security income (SSI) benefits begin?, 388-476-0005 Social Security number requirements, 388-478-0035 Maximum earned income limits for TANF, SFA and RCA and 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangement; repealing WAC 388-400-0025 Who is eligible for disability lifeline benefits?, 388-404-0010 Age requirement for GA-U and ADATSA, 388-408-0010 Who is in my assistance unit for general assistance?, 388-418-0025 Effect of changes on medical program eligibility, 388-424-0016 Citizenship and alien status—Immigrant eligibility restrictions for state medical benefits, 388-448-0001 What are the incapacity requirements for general assistance?, 388-448-0010 How do we decide if you are incapacitated?,

388-448-0020 Which health professionals can I go to for medical evidence?, 388-448-0030 What medical evidence do I need to provide?, 388-448-0035 How we assign severity ratings to your impairment, 388-448-0040 PEP step I—Review of medical evidence required for eligibility determination, 388-448-0050 PEP step II—How we determine the severity of mental impairments, 388-448-0060 PEP step III—How we determine the severity of physical impairments, 388-448-0070 PEP step IV—How we determine the severity of multiple impairments, 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment, 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment, 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work, 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work, 388-448-0120 How we decide how long you are incapacitated, 388-448-0130 Treatment and referral requirements, 388-448-0140 When does a person have good cause for refusing or failing to participate in medical treatment or referrals to other agencies?, 388-448-0150 Penalty for refusing or failure to participate in medical treatment or other agency referrals, 388-448-0160 When do my disability lifeline benefits end?, 388-448-0180 How do we redetermine your eligibility when we decide you are eligible for general assistance expedited medicaid (GAX)?, 388-448-0200 Can I get general assistance while waiting for supplemental security income (SSI)?, 388-448-0210 What is interim assistance and how do I assign it to you?, 388-448-0220 How does alcohol or drug dependence affect my eligibility for disability lifeline?, 388-448-0250 Are there limits on the number of months I may receive disability lifeline benefits?, 388-450-0110 Allocating the income of a GA-U client to legal dependents, 388-450-0135 Allocating income of an ineligible spouse to a GA-U client, 388-450-0175 Does the department offer an income deduction for the general assistance program as an incentive for clients to work?, 388-462-0011 Post adoption cash benefit and 388-478-0030 Payment standards for disability lifeline and ADATSA; and creating new WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?, 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance?, 388-408-0060 Who is in my assistance unit for aged, blind, or disabled (ABD) cash assistance?, 388-449-0001 What are the disability requirements for aged, blind, or disabled (ABD) program?, 388-449-0005 Sequential evaluation process step I—How does the department determine if you are performing substantial gainful employment?, 388-449-0010 What evidence do we consider to determine disability?, 388-449-0015 What medical evidence do I need to provide?, 388-449-0020 How does the department evaluate functional capacity for mental health impairments?, 388-449-0030 How does the department evaluate functional capacity for physical impairments?, 388-449-0035 How does the department assign severity ratings to my impairment?, 388-449-0040 How does the department determine the severity of mental impairments?, 388-449-0045 How does the department determine the severity of physical impairments?, 388-449-0050 How does the department determine the severity of multiple impairments?, 388-449-

0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits?, 388-449-0070 Sequential evaluation process step III—How does the department determine if you meet SSA listing of impairments criteria?, 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?, 388-449-0100 Sequential evaluation process step V—How does the department evaluate if I can perform other work when determining disability?, 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?, 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?, 388-449-0210 What is interim assistance and how do I assign it to the department?, 388-449-0220 How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs?, 388-449-0225 Am I required to participate in vocational rehabilitation services if I receive ABD cash grant?, 388-450-0112 Does the department allocate the income of an ABD cash client to legal dependents?, 388-450-0137 Does the department allocate income of an ineligible spouse to an ABD cash client?, 388-450-0177 Does the department offer an income deduction for the ABD cash program as an incentive for clients to work?, 388-478-0027 What are the payment standards for pregnant women assistance (PWA)?, and 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?

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

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

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

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

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

changes for clarity and to improve readability, and also amended:

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 27, Amended 28, Repealed 33.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 27, Amended 28, Repealed 33.

Date Adopted: April 24, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-18-106, filed 9/3/02, effective 10/4/02)

**WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)?** (1) To receive WTAP benefits, you must:

(a) Be age eighteen or older or, if under eighteen, be the responsible head of household, and either;

(b) Be receiving one of the following programs from us:

(i) Temporary assistance for needy families (TANF);

(ii) State family assistance (SFA);

(iii) ~~((General assistance))~~ Pregnant women assistance (PWA);

(iv) Aged, blind, or disabled (ABD) cash assistance;

(v) Refugee assistance;

~~((vi))~~ (vi) Food assistance;

~~((vii))~~ (vii) State Supplemental Security Income (SSI);

~~((viii))~~ (viii) Medical assistance, including medicare cost sharing programs;

~~((ix))~~ (ix) Community options program entry system (COPES);

~~((ix))~~ (x) Chore services; or

(c) Have completed using community service voice mail services, and been identified to the department as eligible for WTAP by the community agency that provided your community service voice mail program; and

(2) Apply to a local exchange company for WTAP and request the lowest available flat rate telephone service at the WTAP rate. In exchange areas where wireline service is not

available without service extension, you may apply to a wireless carrier:

(a) **"Local exchange company"** means a telephone company that is required by the Washington utilities and transportation commission to offer WTAP benefits and offers local calling, i.e., calling without long distance charges.

(b) **"Flat rate service"** is telephone service with a single monthly payment that allows unlimited local calling for a specified length of time. The local exchange flat rate includes any federal end user access charges and other charges necessary to obtain the service; and

(3) You must have the local telephone service billed in your name.

#### NEW SECTION

**WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?** Effective November 1, 2011:

(1) You can get pregnant women assistance (PWA), if you:

(a) Are pregnant as verified by a medical professional;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington per WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Tell us your social security number as required under WAC 388-476-0005;

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

(2) If you are an unmarried pregnant minor your living arrangements must meet the requirements of WAC 388-486-0005.

(3) You cannot get PWA if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause; or

(e) Are eligible for supplemental security income (SSI) benefits.

#### NEW SECTION

**WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?** (1) Effective November 1, 2011, you are eligible for aged, blind, or disabled (ABD) cash benefits if you:

(a) Are:

(i) At least sixty-five years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Meet the citizenship/alien status requirements under WAC 388-424-0015;

(e) Provide a social security number as required under WAC 388-476-0005;

(f) Reside in the state of Washington as required under WAC 388-468-0005;

(g) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;

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

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

(2) You aren't eligible for aged, blind, or disabled cash benefits if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(e) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(f) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(g) Are eligible for supplemental security income (SSI) benefits;

(h) Are an ineligible spouse of an SSI recipient; or

(i) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(3) If you reside in a public institution and meet all other requirements, your eligibility for ABD cash depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD cash if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(4) You aren't eligible for ABD cash when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

- (a) In a work release program; or
- (b) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

**WAC 388-406-0005 Can I apply for cash, medical, or Basic Food?** (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

- (i) A dependent child;
- (ii) An incapacitated person; or
- (iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for ~~((GAU))~~ ABD cash or medical assistance for you if:

- (a) You temporarily live out-of-state; and
- (b) You are a Washington state resident.

(6) When you are confined or incarcerated in a Washington state public institution, you may apply for cash or medical assistance if you meet the following criteria:

(a) You are confined by or in the following public institutions:

- (i) Department of corrections;
- (ii) City or county jail; or
- (iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:

(a) Meet the criteria of subsection (6) in this section; and  
(b) Were receiving medicaid ~~((or general assistance benefits))~~ immediately before confinement or within the five years prior to confinement.

(8) If you meet the criteria in subsection (6) but did not receive medicaid ~~((or general assistance benefits))~~ within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.

(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it,

and if eligible, we will authorize medical benefits upon the youth's release from confinement.

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

**WAC 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed?** If your application for cash or medical assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

- (i) Medical documentation;
- (ii) For cash assistance, extensive property appraisals; or
- (iii) Out-of-state documents or correspondence.

(3) For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.

(4) For ~~((general assistance (GA)))~~ ABD cash assistance, good cause exists if you apply when you are confined in a Washington State public institution as defined in WAC 388-406-0005 (6)(a).

AMENDATORY SECTION (Amending WSR 10-11-033, filed 5/11/10, effective 7/1/10)

**WAC 388-406-0055 When do my benefits start?** The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, PWA, or RCA; or

(c) No later than the forty-fifth day for ~~((general assistance (GA)))~~ aged, blind, or disabled (ABD) cash assistance unless:

(i) You are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case your benefits will start on the date you are released from confinement; or

(ii) You are approved for ABD cash assistance at the time of your medical care services (MCS) incapacity review as described in WAC 182-508-0160, in which case your benefits will start on the date you provided sufficient medical evidence to establish disability as defined in WAC 388-449-0001.

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the date you provide the required verification. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

(3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.

(4) For long-term care, the date your services start is stated in WAC 388-106-0045.

AMENDATORY SECTION (Amending WSR 03-17-066, filed 8/18/03, effective 9/18/03)

**WAC 388-408-0005 What is a cash assistance unit?**

(1) For all sections of this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person that is applying for or getting benefits from the department.

(c) "**Assistance unit**" or "**AU**" is the group of people who live together and whose income or resources we count to decide your eligibility for benefits and the amount of benefits you get.

(2) For ~~((GA-U))~~ ABD cash, we decide who is in the AU under WAC ~~((388-408-0010))~~ 388-408-0060.

(3) For TANF, PWA, or SFA, we decide who is in the AU by taking the following steps:

(a) We start with who must be in the AU under WAC 388-408-0015;

(b) We add those you choose to have in the AU under WAC 388-408-0025; and

(c) We remove those who are not allowed in the AU under WAC 388-408-0020.

NEW SECTION

**WAC 388-408-0060 Who is in my assistance unit for aged, blind, or disabled (ABD) cash assistance?**

(1) If you are an adult that is aged, blind, or likely to be disabled as defined in WAC 388-400-0060 and 388-449-0001, you can be in a ABD cash assistance unit (AU);

(2) If you are married and live with your spouse, we decide who to include in the AU based on who is aged, blind, or likely to be disabled:

(a) If you are both aged, blind, or likely to be disabled as defined in WAC 388-400-0060 and 388-449-0001, we include both of you in the same AU.

(b) If only one spouse is aged, blind, or likely to be disabled, we include only the aged, blind, or likely to be disabled spouse in the AU. We count some of the income of the spouse that is not in the AU as income to the AU under WAC 388-450-0137.

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-416-0010 Medical certification periods for recipients of cash assistance programs.**

(1) The certification period for medical services begins on the first day of the month of application when the client is determined eligible for cash assistance for one of the following programs:

(a) Temporary assistance for needy families (TANF);

(b) Aged, blind, or disabled (ABD) cash assistance;

(c) Pregnant women assistance (PWA);

(d) Supplemental Security Income (SSI); or

~~((e))~~ (e) Refugee assistance.

(2) The certification period for the medical programs associated with the cash programs in subsection (1) of this section continues as long as eligibility for these programs lasts. When a client's cash assistance is terminated, eligibility for medical assistance is continued until eligibility is redeter-

mined as described in WAC ((388-418-0025)) 182-504-0100.

(3) The certification period for medical can begin up to three months prior to the month of application for clients described in subsection (1) of this section if the conditions in WAC ((388-416-0015(6))) 182-504-0015(6) apply.

~~((4) The certification period for medical care services begins on the date eligibility begins for the following cash assistance programs:~~

~~(a) General assistance for unemployable persons (GA-U); or~~

~~(b) Alcohol and Drug Abuse Treatment and Support Act (ADATSA) programs, when the client is either receiving a grant or waiting for treatment to begin.~~

~~(5) The certification period for medical care services for clients in subsection (4) of this section runs concurrently with the period of eligibility for the client's cash assistance program.)~~

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicaid, and CHIP.** (1) To receive temporary assistance for needy families (TANF), medicaid, or children's health insurance program (CHIP) benefits, an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking; or
- (f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, medicaid, and CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, medicaid, or CHIP for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) ((~~or (5)~~)) are met.

(4) A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive medicaid or CHIP.

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (state family assistance (SFA), ((~~disability lifeline (DL)~~)) aged, blind, or disabled (ABD) cash, and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)), and medical benefits as described in WAC ((388-424-0016)) 182-503-0532; or

(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or

(d) State-funded apple health for kids as described in WAC 388-505-0210(5).

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ((general assistance)) ABD cash, PWA, and ADATSA programs.** (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive ((general assistance (GA))) aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be ((ineligible for the TANF, SFA, or SSI program for a reason other than failure to cooperate with program requirements, and belong to one of the following groups as defined in WAC 388-424-0001):

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien ((~~who meets the Washington state residency requirements as listed in WAC 388-468-0005~~)) described in WAC 388-424-0001 who:

(i) Has verified their intent to stay in the United States indefinitely; and

(ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

~~((3) To receive ADATSA benefits, you must belong to one of the following groups as defined in WAC 388-424-0001:~~

- ~~(a) A U.S. citizen;~~
- ~~(b) A U.S. national;~~
- ~~(c) An American Indian born outside the U.S.;~~
- ~~(d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking; or~~
- ~~(e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.)~~

AMENDATORY SECTION (Amending WSR 11-02-037, filed 12/29/10, effective 2/1/11)

**WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP ((depends on other possible cash benefits.))** (1) You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600 ((~~within the last six months~~));

(b) Pregnant women assistance (PWA);

(c) RCA;

~~((e))~~ ~~Disability lifetime (DL))~~ (d) Aged, blind, or disabled (ABD) cash;

~~((d))~~ (e) Supplemental Security Income (SSI);

~~((e))~~ (f) Medical assistance for those applicants requesting help for a medical need;

~~((f))~~ (g) Food assistance for those applicants requesting help for a food need;

~~((g))~~ (h) Housing assistance from any available source for those applicants requesting help for a housing need;

~~((h))~~ (i) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

(i) TANF/SFA;

(ii) PWA;

(iii) RCA;

~~((iii))~~ (iv) DCA; or

~~((iv))~~ (v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA. ~~((:))~~

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

**AMENDATORY SECTION** (Amending WSR 05-21-100, filed 10/18/05, effective 11/18/05)

**WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?** (1) You are a **fleeing felon** if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, ~~((GA))~~ PWA, ABD cash, or Basic Food benefits.

#### **NEW SECTION**

**WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?**

(1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" is defined by the Social Security Administration for supplemental security income (SSI) as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has

lasted or can be expected to last for a continuous period of not less than twelve months with available treatment.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to alcohol or drug abuse or addiction.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for long-term care services from aging and disability services administration for a medical condition that is expected to last twelve months or more or result in death; or

(e) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by alcohol or drug addiction and do not meet the other disability criteria in subsection (2) (a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of alcoholism or drug addiction.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social

Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

- (a) You file a timely appeal with SSA;
  - (b) SSA decides you have good cause for a late appeal;
- or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

#### NEW SECTION

**WAC 388-449-0005 Sequential evaluation process step 1—How does the department determine if you are performing substantial gainful employment?** We deny disability if you are engaging in substantial gainful activity (SGA) when you apply for aged, blind, or disabled (ABD) benefits. "Substantial gainful activity" means you are performing, in a regular and predictable manner, an activity usually done for pay or profit.

(1) You must be earning less than the SGA standard as defined by the Social Security Administration (SSA) to be eligible for ABD cash, unless:

- (a) You work under special conditions that go beyond the employer providing reasonable accommodation, such as a sheltered workshop; or
- (b) You provide evidence you work occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

#### NEW SECTION

**WAC 388-449-0010 What evidence do we consider to determine disability?** To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include:

(1) For a physical impairment, a health professional licensed in Washington State or where the examination was performed:

- (a) A physician, which includes:
  - (i) Medical doctor (M.D.);
  - (ii) Doctor of osteopathy (D.O.);
  - (iii) Doctor of optometry (O.D.) for visual disorders;
  - (iv) Doctor of podiatry (D.P.) for foot disorders; and
  - (v) Qualified speech-language pathologists, for purposes of establishing speech or language impairments only.

(2) For a mental impairment, professionals licensed in Washington State or where the examination was performed:

- (a) A psychiatrist; or
- (b) A psychologist.

(3) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in (1) and (2) above, "treating medical sources" include:

- (a) All medical professionals listed in (1) and (2) above;
- (b) A physician treating you for a mental impairment;
- (c) A physician's assistant for physical impairments; and
- (d) An advanced nurse practitioner for conditions within their certification.

(4) "Other evidence" means information from other sources not listed in subsection (1), (2), or (3) of this section who can provide supporting documentation of functioning for impairments established by acceptable medical sources in subsections (1) or (2) of this section. Sources of "other evidence" include public and private agencies, schools, parents, caregivers, employers, and practitioners such as social workers, mental health professionals, naturopaths, chiropractors, physical therapists, and audiologists.

#### NEW SECTION

**WAC 388-449-0015 What medical evidence do I need to provide?** You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

- (1) Objective evidence for physical impairments means:
- (a) Laboratory test results;
  - (b) Pathology reports;
  - (c) Radiology findings including results of X rays and computer imaging scans;
  - (d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and
  - (e) Hospital history and physical reports and admission and discharge summaries; or
  - (f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

- (a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

- (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;

(c) Documentation of how long a condition has impaired your ability to perform work related activities;

(d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and



(e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ninety days of the date of application or forty-five days before the month of disability review.

(4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance abuse or a diagnosis of chemical dependency when determining disability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of drug or alcohol abuse or addiction.

(8) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.

**NEW SECTION**

**WAC 388-449-0020 How does the department evaluate functional capacity for mental health impairments?** If you have a mental impairment, we evaluate ability to function in a work setting based on an objective clinical assessment from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010. Functioning means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following very short and simple instructions.

(b) Understand, remember, and persist in tasks by following detailed instructions.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.

(d) Learn new tasks.

(e) Perform routine tasks without special supervision.

(f) Adapt to changes in a routine work setting.

(g) Make simple work-related decisions.

(h) Be aware of normal hazards and take appropriate precautions.

(i) Ask simple questions or request assistance.

(j) Communicate and perform effectively in a work setting with public contact.

(k) Communicate and perform effectively in a work setting with limited public contact.

(l) Complete a normal workday and workweek without interruptions from psychologically based symptoms.

(m) Set realistic goals and plan independently.

(n) Maintain appropriate behavior in a work setting.

**NEW SECTION**

**WAC 388-449-0030 How does the department evaluate functional capacity for physical impairments?** If you have a physical impairment, we evaluate your ability to work based on objective medical evidence from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010.

(1) "**Exertion level**" means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time.

The following table is used to determine your exertion level. Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O\*NET).

If you are able to:	Then we assign this exertion level
(a) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary
(b) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) "**Exertional limitation**" means a restriction in mobility, agility or flexibility in the following twelve activities: balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. We consider any exertional limitations when we determine your ability to work.

(3) "**Functional physical capacity**" means the degree of strength, agility, flexibility, and mobility you can apply to

work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the severity of the physical impairment(s) is moderate, marked, or severe. We determine functional physical capacity based on your exertional and nonexertional limitations. All limitations must be substantiated the medical evidence and directly related to the diagnosed impairment(s).

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Nonexertional restrictions may include, among other things, your inability to work at heights or in an area where you would be exposed to chemicals.

(5) **"Functional limitations"** means a restriction on work activities related to unrelieved pain or the effects of prescribed medication. We determine your functional limitations based on objective documentation from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010. We evaluate functioning by assessing your ability to:

- (a) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.
- (b) Perform routine tasks without undue supervision.
- (c) Make simple work-related decisions.
- (d) Be aware of normal hazards and take appropriate precautions.
- (e) Ask simple questions or request assistance.
- (f) Maintain appropriate behavior in a work setting.

NEW SECTION

**WAC 388-449-0035 How does the department assign severity ratings to my impairment?** (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform basic work activities. The following chart provides a description of limitations on work activities and the severity ratings assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on your performance of one or more basic work-related activities.	None	1
(b) There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on your performance of one or more basic work-related activities.	Moderate	3
(d) There are very significant limits on your performance of one or more basic work-related activities.	Marked	4

Effect on Work Activities	Degree of Impairment	Numerical Value
(e) You are unable to perform basic work-related activities.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the acceptable medical source or your treating provider, and review other evidence you provide, to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

- (a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental health impairment;
  - (b) Your impairment has lasted or is expected to last, twelve months or more with available medical treatment; and
  - (c) You are not an active ABD recipient previously determined likely to be disabled as defined in WAC 388-449-0010 through 388-449-0100.
- (4) The contracted doctor reviews your medical evidence, severity rating, and functional assessment to determine whether:

- (a) The Medical evidence is objective and sufficient to support the findings of the provider;
- (b) The description of the impairment(s) is supported by the medical evidence; and
- (c) The severity rating and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical provider's description of your impairment(s) is not consistent with the objective evidence, we will:

- (a) Assign a severity rating and functional limitations consistent with the objective medical evidence; and
- (b) Clearly describe why we rejected the medical evidence provider's opinion; and
- (c) Identify the medical evidence used to make the determination.

NEW SECTION

**WAC 388-449-0040 How does the department determine the severity of mental impairments?** If you are diagnosed with a mental impairment by an acceptable medical source described in WAC 388-449-0010, we use information from medical sources described in WAC 388-449-0010 to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining practitioner, and other evidence, that show how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and symptoms related to alcohol or substance abuse or addiction, if we have evidence substance use is material to your impairment.

(3) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	None (1)
71 to 84	Moderate (3)
60 to 70	Marked (4)
59 or lower	Severe (5)

(4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

(5) We base the severity of an impairment diagnosed as a mood, thought, personality, anxiety, memory, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

(a) Affect your ability to perform basic work related activities; and

(b) Are consistent with a diagnosis of a mental impairment as listed in the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders.

(6) We consider the combined effect of your symptoms on your ability to perform basic work activities. We determine the severity rating for a functional mental impairment as follows:

Symptom Ratings or Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features. (c) You have had two or more hospitalizations for psychiatric reasons in the past two years. (d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years. (e) The clinical findings and objective evidence are consistent with a very significant limitations on ability to perform one or more basic work activities.	Marked (4)
(f) The clinical findings and objective evidence are consistent with the inability to perform work activities.	Severe (5)

(7) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or (b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	Marked (4)
(c) Two or more disorders rated marked severity (4).	Severe (5)

NEW SECTION

**WAC 388-449-0045 How does the department determine the severity of physical impairments?** We must decide if your physical impairment is serious enough to significantly limit your ability to perform substantial gainful activity. "Severity of a physical impairment" means the degree that an impairment restricts you from performing basic work-related activities (see WAC 388-449-0005). Severity ratings range from none to severe. We will assign severity ratings according to the table in WAC 388-449-0035.

We assign to each physical impairment a severity rating that is supported by medical evidence.

NEW SECTION

**WAC 388-449-0050 How does the department determine the severity of multiple impairments?** (1) If you have more than one impairment, we decide the overall severity rating by determining if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Your Condition	Severity Rating
(i) All impairments are mild and there is no cumulative effect on basic work activities.	Mild
(ii) All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate
(iii) Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked
(iv) Two are more impairments are of marked severity.	Severe

NEW SECTION

**WAC 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits?** When we

receive your medical evidence, we review it to determine if it is sufficient to decide whether your circumstances meet disability requirements.

(1) We require written medical evidence to determine disability. The medical evidence must:

(a) Contain sufficient information as described under WAC 388-449-0015;

(b) Be written by an acceptable medical source or treating provider described in WAC 388-449-0010;

(c) Document the existence of a potentially disabling condition by an acceptable medical source described in WAC 388-449-0010; and

(d) Document the impairment has lasted or is expected to last twelve continuous months or more with available treatment, or result in death.

(2) If the information received isn't clear, we may require more information before we determine whether you meet ABD disability requirements. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny disability if:

(a) We don't have evidence that your impairment is of at least moderate severity as defined in WAC 388-449-0035, 388-449-0040, 388-449-0045, or 388-449-0050;

(b) Your impairment hasn't lasted or isn't expected to last twelve or more months with available treatment or result in death; or

(c) We have evidence drug or alcohol abuse or addiction is material to your impairment(s).

**NEW SECTION**

**WAC 388-449-0070 Sequential evaluation process step III—How does the department determine if you meet SSA listing of impairments criteria?** We approve disability when we determine your impairment(s) meet a listing described in appendix 1 to Subpart P of Part 404 within Title 20 of the Code of Federal Regulations.

**NEW SECTION**

**WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?** (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past fifteen years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

**NEW SECTION**

**WAC 388-449-0100 Sequential evaluation process step V—How does the department evaluate if I can perform other work when determining disability?** If we decide you cannot do work that you have done before, we consider your age, education, and other factors to decide if you have the residual functional capacity to perform other work.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enable you to meet job requirements. We classify education as:

If you	Then your education level is
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the sixth grade.	Marginal education
(c) Have no formal schooling or vocational training beyond the eleventh grade; or (d) Had participated in special education in basic academic classes of reading, writing or mathematics in high school.	Limited education
(e) Have received a high school diploma or general equivalency degree (GED) and don't meet the special education definition in (d) above; or (f) Have received skills training and were awarded a certificate, degree or license.	High school and above level of education

(2) We approve disability when you have a moderate, marked, or severe physical health impairment and you meet the criteria below:

Exertional level	Your age	Your education level	Work history	Nonexertional and functional limitations
Restricted to less than sedentary	Any age	Any level	Does not apply	Does not apply
Restricted to sedentary	Any age	Any level	Does not apply	You have nonexertional or functional impairments that preclude all sedentary work
Restricted to sedentary	Fifty and older	Any level	Does not apply	Does not apply
Restricted to sedentary	Forty-five and older	Marginal education, illiterate, or unable to communicate in English	Unskilled or none	Does not apply
Restricted to light	Any age	Any level	Does not apply	You have nonexertional or functional impairments that preclude all sedentary work
Restricted to light	Fifty and older	Marginal education or unable to communicate in English	Does not apply	Does not apply

(3) We approve disability when you have a moderate, marked, or severe mental impairment and you meet the criteria below:

Your age	Your education	Work history	Social and cognitive limitations
Any age	Any level	Any level	Substantial loss of ability to: <ul style="list-style-type: none"> <li>• Understand, remember, and persist in tasks by following very short and simple instructions;</li> <li>• Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision;</li> <li>• Perform routine tasks without special supervision;</li> <li>• Adapt to changes in a routine work setting;</li> <li>• Make simple work-related decisions;</li> <li>• Be aware of normal hazards and take appropriate precautions;</li> <li>• Ask simple questions or request assistance;</li> <li>• Communicate and perform effectively in a work setting;</li> <li>• Complete a normal workday and workweek without interruptions from psychologically based symptoms; or</li> <li>• Maintain appropriate behavior in a work setting.</li> </ul>
Fifty and older	Any level	Any level	Substantial loss of ability to: <ul style="list-style-type: none"> <li>• Understand, remember, and persist in tasks by following detailed instructions;</li> <li>• Set realistic goals and plan independently; or</li> <li>• Learn new tasks.</li> </ul>

(4) "**Substantial loss of ability**" means you are not able to perform the particular activity in regular competitive employment or outside of a sheltered work setting.

(5) We approve disability when you have both mental and physical impairments, with an overall severity that is moderate, marked, or severe, and you meet the criteria below:

Your age	Your education level	Exertional level	Social and cognitive limitations	Other vocational factors
Any age	Any level	Restricted to light or less	You have a substantial loss of ability to: <ul style="list-style-type: none"> <li>• Communicate and perform effectively in a work setting; or</li> <li>• Maintain appropriate behavior in a work setting.</li> </ul>	No transferable skills to work level
Fifty or older	Limited education or unable to communicate in English	Restricted to light or less	Does not apply	No transferable skills to work level
Any age	Marginal education, illiterate, or unable to communicate in English	Restricted to medium or less	You have a substantial loss of ability to: <ul style="list-style-type: none"> <li>• Communicate and perform effectively in a work setting with limited public contact; or</li> <li>• Maintain appropriate behavior in a work setting.</li> </ul>	No transferable skills to work level

(6) If you don't meet the criteria listed above, and there are jobs you can do in the national economy, we will find you able to perform other work and take the following actions:

- (a) Deny disability; and
- (b) Give you examples of jobs you can do in the national economy despite your impairments(s).

(7) If there are no jobs you can do in the national economy despite your impairment(s), we approve disability.

**NEW SECTION**

**WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?** (1) The maximum period of eligibility for ABD cash is twenty-four months before we must review additional medical evidence. If you remain on ABD cash at the end of the twenty-four month period, we determine your eligibility using current medical evidence.

(2) If your application for SSI is denied:

- (a) We review your eligibility for the ABD cash program;
- (b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within sixty days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

**NEW SECTION**

**WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?** (1) You may receive

ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you meet one of the following good cause reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits will end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

**NEW SECTION**

**WAC 388-449-0210 What is interim assistance and how do I assign it to the department?** The ABD and SSI programs both provide cash assistance to meet your basic

needs. You cannot receive this assistance for the same time period from both programs. When you are approved for or reinstated on SSI, you may receive a retroactive payment. When we made GA, DL, or ABD payments to you or on your behalf for the same time period, you must assign your interim assistance to repay us.

(1) **"Assign"** means that you sign a written authorization for the Social Security Administration (SSA) to send the SSI retroactive payment to us.

(2) **"Interim assistance"** means the monetary value of benefits we paid to you or on your behalf during:

(a) The time between your SSI application date and the month recurring SSI payments begin; or

(b) The period your SSI payments were suspended or terminated, and later reinstated.

#### NEW SECTION

**WAC 388-449-0220 How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs?** (1) You must complete a chemical dependency assessment when we have information that indicates you may be chemically dependent.

(2) You must accept an assessment referral and participate in drug or alcohol treatment if a certified chemical dependency counselor indicates a need for treatment, unless you meet one of the following good cause reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient chemical dependency treatment you need isn't available in the county you live in.

(c) You need inpatient chemical dependency treatment at a location that you can't reasonably access.

(3) If you refuse or fail to complete an assessment or treatment without good cause, your benefits will end until you provide proof you are pursuing an assessment or treatment as required.

#### NEW SECTION

**WAC 388-449-0225 Am I required to participate in vocational rehabilitation services if I receive ABD cash grant?** You must participate in vocational rehabilitation services through the division of vocational rehabilitation (DVR) if you are determined to be eligible for DVR services.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

**WAC 388-450-0040 Native American benefits and payments.** This section applies to TANF/SFA, RCA, ~~((GA))~~ PWA, ABD cash, medical, and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgement funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540;

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 06-17-017, filed 8/4/06, effective 9/4/06)

**WAC 388-450-0045 How do we count income from employment and training programs?** This section applies to cash assistance, Basic Food, and medical programs for families, children, and pregnant women.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program.

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you:

(i) Received Basic Food or cash assistance at the time you joined the Title I program; or

(ii) Were participating in the Title I program and received an income disregard at the time of conversion to the Food Stamp Act of 1977. We continue to exclude the payments even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) ~~((When GAU clients receive training allowances we allow:~~

~~(a) The earned income incentive and work expense deduction specified under WAC 388-450-0175, when applicable; and~~

~~(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.~~

(7)) We exclude support service payments received by or made on behalf of WorkFirst participants.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-450-0095 Allocating income—General.** This section applies to TANF/SFA, RCA, ~~((and GA))~~ PWA, and ABD cash assistance programs.

(1) Allocation is the process of determining how much of a financially responsible person's income is considered available to meet the needs of legal dependents within or outside of an assistance unit.

(2) In-bound allocation means income possessed by a financially responsible person outside the assistance unit which is considered available to meet the needs of legal dependents in the assistance unit.

(3) Out-bound allocation means income possessed by a financially responsible assistance unit member which is set aside to meet the needs of a legal dependent outside the assistance unit.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

**WAC 388-450-0100 Allocating income—Definitions.** The following definitions apply to the allocation rules for TANF/SFA, RCA, ~~((and GA))~~ PWA, and ABD cash programs:

(1) **"Dependent"** means a person who:

(a) Is or could be claimed for federal income tax purposes by the financially responsible person; or

(b) The financially responsible person is legally obligated to support.

(2) **"Financially responsible person"** means a parent, stepparent, adoptive parent, spouse or caretaker relative.

(3) A **"disqualified assistance unit member"** means a person who is:

(a) An unmarried pregnant or parenting minor under age eighteen who has not completed a high school education or general education development (GED) certification and is not participating in those educational activities which would lead to the attainment of a high school diploma or GED;

(b) An unmarried pregnant or parenting minor under age eighteen who is not living in a department-approved living situation;

(c) The financially responsible person who does not report to the department within five days of the date it becomes reasonably clear that the absence of a child will exceed ninety days;

(d) A person who has been convicted in federal or state court of having made a fraudulent statement or representation about their place of residence in order to receive assistance from two or more states at the same time as defined in WAC 388-446-0010; and

(e) A person who has been convicted of unlawfully receiving public assistance as defined under WAC 388-446-0005.

(4) **"Ineligible assistance unit member"** means an individual who is:

(a) Ineligible for cash assistance due to the citizenship/alien status requirements in WAC 388-424-0010;

(b) Ineligible to receive assistance under WAC 388-442-0010 for having been convicted after August 21, 1996, under federal or state law, of possession, use or distribution of a controlled substance;

(c) Ineligible to receive assistance under WAC 388-442-0010 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime;

(d) Ineligible to receive assistance under WAC 388-442-0010 for violating a condition of probation or parole which was imposed under a federal or state law as determined by an administrative body or court of competent jurisdiction;

(e) The spouse of a woman who receives cash benefits from the ~~((GA-S))~~ PWA program; or

(f) The adult parent of a minor parent's child.

NEW SECTION

**WAC 388-450-0112 Does the department allocate the income of an ABD cash client to legal dependents?** This



section applies to the aged, blind, or disabled (ABD) cash assistance program.

(1) The income of an ABD cash client is reduced by the following:

(a) The ABD cash earned income disregard as specified in WAC 388-450-0177; and

(b) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

(2) When a ABD cash client in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the client's needs after the income is reduced by the following:

(a) The payment standard amount for the nonapplying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while in an alternative care facility.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-450-0115 ((Allocating)) Does the department allocate the income of a financially responsible person who is excluded from the assistance unit((s))?** This section applies to TANF/SFA, RCA and ((GA-S)) PWA programs.

The income of a financially responsible person excluded from the assistance unit is available to meet the needs of the assistance unit after the income is reduced by the following:

(1) A ninety dollar work expense deduction from the financially responsible person(s) excluded from the assistance unit who is employed;

(2) The payment standard amount for the ineligible assistance unit members living in the home; and

(3) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-450-0120 ((Allocating)) Does the department allocate the income of financially responsible parents to a pregnant or parenting minor((s))?** This section applies to TANF/SFA, RCA and ((GA-S)) PWA programs.

The income of nonapplying financially responsible parent(s) of a pregnant or parenting minor is countable to meet the needs of the minor and the child(ren) after the income is reduced by the following:

(1) A ninety dollar work expense from the financially responsible parent's gross income from employment;

(2) An amount not to exceed the department's standard of need for:

(a) The financially responsible parent and dependent living in the home who are not applying for or receiving cash benefits and not a disqualified individual; and

(b) Court or administratively ordered current or back support for legal dependents.

(3) Spousal maintenance payments made to meet the needs of individuals not living in the home.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-450-0130 ((Allocating)) Does the department allocate the income of a nonapplying spouse to a caretaker relative((s))?** This section applies to TANF/SFA, PWA, and RCA programs.

(1) The community income of the nonapplying spouse and applying spouse is combined. See WAC 388-450-0005 to determine what income is available as community income.

(2) Subtract a one person payment standard as specified in WAC 388-478-0020.

(3) The remainder is allocated to the caretaker relative.

NEW SECTION

**WAC 388-450-0137 Does the department allocate income of an ineligible spouse to an ABD cash client?** This section applies to the aged, blind, or disabled (ABD) cash assistance program.

(1) When an ABD cash client is married and lives with the nonapplying spouse, the following income is available to the client:

(a) The remainder of the client's wages, retirement benefits or separate property after reducing the income by:

(i) The ABD cash work incentive deduction, as specified in WAC 388-450-0177; and

(ii) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

(b) The remainder of the nonapplying spouse's wages, retirement benefits and separate property after reducing the income by:

(i) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents; and

(ii) The payment standard amount as specified under WAC 388-478-0033 which includes ineligible assistance unit members.

(c) One-half of all other community income, as provided in WAC 388-450-0005.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-450-0156 When am I exempt from deeming?** (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban/Haitian entrant; or

(v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

- (i) You no longer live with your sponsor; and
  - (ii) Leaving your sponsor caused your need for benefits.
- (2) You are exempt from the deeming process while you are in the same AU as your sponsor;
- (3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements.

(4) For Basic Food, you are exempt from deeming while you are under age eighteen.

(5) For state family assistance, ~~((disability lifeline (DL)))~~ aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA), state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:

- (a) Your sponsor signed the affidavit of support more than five years ago;
- (b) Your sponsor becomes permanently incapacitated; or
- (c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

(6) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

(7) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called

the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

(8) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

- (a) The names of the sponsored people in your AU;
- (b) That you are exempt from deeming due to your income;
- (c) Your sponsor's name; and
- (d) The effective date that your twelve-month exemption began.

(9) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

- (10) If you choose not to use the indigence exemption:
  - (a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or
  - (b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 04-03-051, filed 1/15/04, effective 2/15/04)

**WAC 388-450-0170 ~~((TANF/SFA earned income incentive and deduction.))~~ Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work?** This section applies to TANF/SFA, RCA, PWA, and medical programs for children, pregnant women, and families except as specified under WAC 388-450-0210.

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

- (a) The amount we subtract is:
  - (i) Prorated according to the date you are eligible for benefits;
  - (ii) Cannot be more than your gross monthly income; and

(ii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions		
Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50

Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

#### NEW SECTION

**WAC 388-450-0177 Does the department offer an income deduction for the ABD cash program as an incentive for clients to work?** The department gives a deduction to people who receive income from work while receiving aged, blind, or disabled cash assistance. The deduction applies to aged, blind, or disabled cash benefits only. We allow the following income deduction when we determine the amount of your benefits:

We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

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

**WAC 388-460-0020 Who is a protective payee?** (1) A protective payee is a person or an employee of an agency who manages client cash benefits to provide for basic needs - housing, utilities, clothing, child care, and food. They may also provide services such as training clients how to manage money.

(2) Clients are assigned to protective payees for the following reasons:

(a) Emergency or temporary situations where a child is left without a caretaker (TANF/SFA) per WAC 388-460-0030;

(b) Mismanagement of money (TANF/SFA, ~~((GA))~~ PWA, ABD cash, or WCCC) per WAC 388-460-0035; or

(c) Pregnant or parenting minors per WAC 388-460-0040.

AMENDATORY SECTION (Amending WSR 02-14-083, filed 6/28/02, effective 7/1/02)

**WAC 388-460-0040 When ~~((is))~~ does the department assign a protective payee assigned to TANF/SFA or PWA pregnant or parenting minors?** Pregnant or parenting minors who are not emancipated under court order must be assigned to protective payees if the clients are:

- (1) Head of a household;
- (2) Under age eighteen;
- (3) Unmarried; and
- (4) Pregnant or have a dependent child.

AMENDATORY SECTION (Amending WSR 03-20-060, filed 9/26/03, effective 10/27/03)

**WAC 388-468-0005 Residency.** Subsections (1) through (4) applies to cash, the Basic Food program, and medical programs.

(1) A resident is a person who:

(a) Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) A person does not need to live in the state for a specific period of time to be considered a resident.

(3) A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) With the exception of subsection (5) of this section, a client can temporarily be out of the state for more than one month. If so, the client must supply the department with adequate information to demonstrate the intent to continue to reside in the state of Washington.

(5) Basic Food program assistance units who are not categorically eligible do not meet residency requirements if they stay out of the state more than one calendar month.

(6) A client may not receive comparable benefits from another state for the cash and Basic Food programs.

(7) A former resident of the state can apply for the ~~((GA-))~~ ABD cash program while living in another state if:

(a) The person:

(i) Plans to return to this state;

(ii) Intends to maintain a residence in this state; and

(iii) Lives in the United States at the time of the application.

(b) In addition to the conditions in subsection (7)(a)(i)(ii), and (iii) being met, the absence must be:

(i) Enforced and beyond the person's control; or

(ii) Essential to the person's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

(8) Residency is not a requirement for detoxification services.

(9) A person is not a resident when the person enters Washington state only for medical care. This person is not eligible for any medical program. The only exception is described in subsection (10) of this section.

(10) It is not necessary for a person moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The person is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

(11) For purposes of medical programs, a client's residence is the state:

(a) Paying a state Supplemental Security Income (SSI) payment; or

(b) Paying federal payments for foster or adoption assistance; or

(c) Where the noninstitutionalized individual lives when medicaid eligibility is based on blindness or disability; or

(d) Where the parent or legal guardian, if appointed, for an institutionalized:

(i) Minor child; or

(ii) Client twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one.

(e) Where a client is residing if the person becomes incapable of determining residential intent after reaching twenty-one years of age; or

(f) Making a placement in an out-of-state institution; or

(g) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(12) In a dispute between states as to which is a person's state of residence, the state of residence is the state in which the person is physically located.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-19-059, filed 9/16/05, effective 10/17/05)

**WAC 388-473-0010 What are ongoing additional requirements and how do I qualify?** "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash;

~~((d) General assistance cash))~~ (e) Aged, blind, or disabled (ABD) cash assistance; or

~~((e))~~ (f) Supplemental Security Income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash or medical assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
<del>((GA))</del> <u>ABD</u>	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

AMENDATORY SECTION (Amending WSR 02-11-033, filed 5/7/02, effective 6/7/02)

**WAC 388-474-0010 How does being a supplemental security income (SSI) client affect your cash assistance eligibility?** (1) If you are married to an SSI recipient but do not get SSI in your own right, you are called an "ineligible spouse."

(2) If you are an ineligible spouse you cannot get the SSI state supplement when you are:

(a) The caretaker relative of a child who receives TANF or SFA; and

(b) Required to be included in the TANF or SFA assistance unit with the child (see WAC 388-408-0015); or

(c) Receiving refugee assistance.

(3) If you are an ineligible spouse and get an SSI state supplement (WAC 388-474-0012), you cannot get ~~((general assistance (GA)))~~ aged, blind, or disabled (ABD) cash assistance.

AMENDATORY SECTION (Amending WSR 02-11-033, filed 5/7/02, effective 6/7/02)

**WAC 388-474-0020 What can ~~((a general assistance-unemployable (GA-U)))~~ an aged, blind, or disabled (ABD) cash assistance client expect when supplemental security income (SSI) benefits begin?** You ~~((can only get))~~ may only receive assistance to meet your basic needs from one government source at a time (WAC ~~((388-448-0210))~~ 388-449-0210). If you are ~~((a GA-U))~~ an ABD cash client who begins ~~((setting))~~ getting SSI, you should know that:

(1) If you got advance, emergency or retroactive SSI cash assistance for any period where you ~~((got GA-U))~~ received general assistance (GA), disability lifeline (DL), or aged, blind, or disabled (ABD) cash assistance, you must repay the department the amount of ~~((GA-U))~~ cash assistance paid to you for the matching time period.

(2) When you apply for ~~((GA-U))~~ ABD cash you must sign DSHS 18-235(X), interim assistance reimbursement agreement (IARA) to ~~((get GA-U))~~ receive ABD cash assistance.

(3) You cannot use your ~~((GA-U))~~ ABD money to replace money deducted from your SSI check to repay an SSI overpayment.

AMENDATORY SECTION (Amending WSR 10-17-101, filed 8/17/10, effective 9/17/10)

**WAC 388-476-0005 Social Security number requirements.** (1) With certain exceptions, each person who applies for or receives cash, medical or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

(a) Apply for the SSN;

- (b) Provide proof that the SSN has been applied for; and
- (c) Provide the SSN when it is received.
- (3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.
- (4) For cash, medical, and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.
- (5) For food assistance programs:
  - (a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.
  - (b) If a person is unable to provide proof of application for a SSN for a newborn:
    - (i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.
    - (ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.
  - (6) For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.
  - (7) There is no SSN requirement for the following programs:
    - (a) The consolidated emergency assistance program;
    - (b) The refugee cash and medical assistance program;
    - (c) The alien emergency medical program; and
    - (d) ~~((The state funded pregnant woman program; and~~
    - (e)) Detoxification services.

**NEW SECTION**

**WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)?** (1) The payment standards for PWA cash assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$197

(2) The payment standards for PWA cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$120

**NEW SECTION**

**WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?** (1) The payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment standard
1	\$197

Assistance Unit Size	Payment standard
2	\$248

(2) The payment standards for aged, blind, or disabled (ABD) cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$120
2	\$152

**AMENDATORY SECTION** (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangement.** (1) This rule affects only the minor's eligibility for cash assistance. It does not affect the eligibility of the minor parent's child for a cash grant.

(2) The following definitions apply to terms used in this section:

(a) "Unmarried" means a person who ~~((have))~~ has never been married or whose marriage has been annulled. It does not include a person who has been divorced or widowed.

(b) "Minor" means a person younger than eighteen years of age.

(c) "Legal guardian" means a court-appointed legal guardian or court-appointed permanent custodian.

(d) "Relative" is a person who is related to the pregnant or parenting minor as defined under RCW 74.15.020(4).

(3) An unmarried pregnant or parenting minor is not eligible for TANF, SFA or ~~((GA-S))~~ PWA unless the person:

- (a) Has been emancipated by a court; or
- (b) Lives in a home approved by the department and has a protective payee.

(4) The home of a minor's parent, legal guardian, or adult relative may be approved unless:

(a) The minor has no living parent, legal guardian, or adult relative that can be located or those persons do not want the minor to live with them;

(b) The minor or the minor's child is being or has been seriously harmed either physically, emotionally or sexually in the home of the parent, legal guardian, or adult relative;

(c) Substantial evidence exists of an act or failure to act by the parent, legal guardian, or adult relative that presents imminent or serious harm to the minor or the minor's child if they lived there; or

(d) The department determines that it is in the best interest of the minor or the minor's child to waive the requirement of living in the home of a parent, legal guardian, or adult relative.

(5) If the home of a minor's parent, legal guardian, or adult relative is not available or suitable, one of the following alternatives may be approved:

- (a) A facility or home licensed under chapter 74.15 RCW that provides a supportive and supervised living arrangement requiring residents to learn parenting skills;
- (b) A maternity home;
- (c) Other adult-supervised living arrangement; or

(d) The minor's current or proposed living arrangement, if the department determines it is appropriate.

(6) A home that includes the other natural parent of the minor's child or unborn child is never approved if:

(a) The minor is under age sixteen; and

(b) The other parent is eighteen or older and meets the age criteria for rape of a child as set forth in RCW 9A.44.073, 9A.44.076, and 9A.44.079.

(7) The income of a minor parent found ineligible under this section is treated according to WAC 388-450-0100 and 388-450-0115 when determining the eligibility and benefit level of the minor parent's child.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-400-0025 Who is eligible for disability lifeline benefits?

WAC 388-404-0010 Age requirement for GA-U and ADATSA.

WAC 388-408-0010 Who is in my assistance unit for general assistance?

WAC 388-418-0025 Effect of changes on medical program eligibility.

WAC 388-424-0016 Citizenship and alien status—Immigrant eligibility restrictions for state medical benefits.

WAC 388-448-0001 What are the incapacity requirements for general assistance?

WAC 388-448-0010 How do we decide if you are incapacitated?

WAC 388-448-0020 Which health professionals can I go to for medical evidence?

WAC 388-448-0030 What medical evidence do I need to provide?

WAC 388-448-0035 How we assign severity ratings to your impairment.

WAC 388-448-0040 PEP step I—Review of medical evidence required for eligibility determination.

WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments.

WAC 388-448-0060 PEP step III—How we determine the severity of physical impairments.

WAC 388-448-0070 PEP step IV—How we determine the severity of multiple impairments.

WAC 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment.

WAC 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment.

WAC 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work.

WAC 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work.

WAC 388-448-0120 How we decide how long you are incapacitated.

WAC 388-448-0130 Treatment and referral requirements.

WAC 388-448-0140 When does a person have good cause for refusing or failing to participate in medical treatment or referrals to other agencies?

WAC 388-448-0150 Penalty for refusing or failure to participate in medical treatment or other agency referrals.

WAC 388-448-0160 When do my disability lifeline benefits end?

WAC 388-448-0180 How do we redetermine your eligibility when we decide you are eligible for general assistance expedited medical aid (GAX)?

WAC 388-448-0200 Can I get general assistance while waiting for supplemental security income (SSI)?

WAC 388-448-0210 What is interim assistance and how do I assign it to you?

WAC 388-448-0220 How does alcohol or drug dependence affect my eligibility for disability lifeline?

WAC 388-448-0250 Are there limits on the number of months I may receive disability lifeline benefits?

WAC 388-450-0110 Allocating the income of a GA-U client to legal dependents.

WAC 388-450-0135 Allocating income of an ineligible spouse to a GA-U client.

- WAC 388-450-0175 Does the department offer an income deduction for the general assistance program as an incentive for clients to work?
- WAC 388-462-0011 Post adoption cash benefit.

**AMENDATORY SECTION** (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

**WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA(€)?** To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), ((€)) refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Monthly Earned Income Level
1	\$610	6	\$1,472
2	770	7	1,700
3	955	8	1,882
4	1,124	9	2,066
5	1,295	10 or more	2,246

**REPEALER**

The following section of the Washington Administrative Code is repealed:

- WAC 388-478-0030 Payment standards for disability lifeline and ADATSA.

**WSR 12-12-006  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-90—Filed May 23, 2012, 5:31 p.m., effective June 23, 2012]

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

Purpose: WAC 232-28-286 2013, 2014, and 2015 Spring black bear seasons and regulations, this rule is intended to reduce tree damage by bears; to disperse harvest geographically and reduce female harvest; and to reduce nuisance and damage activity, while maintaining long-term sustainable populations.

WAC 232-28-288 2012-2014 Fall black bear hunting seasons and regulations, this rule provides recreational harvest opportunities for black bear, while maintaining long-term sustainable populations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-286 and 232-28-288.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 12-04-098 on February 1, 2012.

Changes Other than Editing from Proposed to Adopted Version: **WAC 232-28-286 2013, 2014, and 2015 Spring black bear seasons and regulations.**

Changes, if any, from the text of the proposed rule and reasons for difference:

- Change permit levels for the 49 Degrees North hunt and the Huckleberry hunt from 25 to 50. This change was made at the request of the fish and wildlife commission to provide additional recreational opportunity, while attempting to address depredation on deer.
- For the Monroe hunt, delete Green Crow as a participating landowner and add Campbell Group. The reason is Campbell Group purchased Green Crow lands.

**WAC 232-28-288 2012-2014 Fall black bear hunting seasons and regulations.**

Changes, if any, from the text of the proposed rule and reasons for difference:

- For the South Cascades Black Bear Management Unit, change opening day to Aug. 15 for 2012, 2013, and 2014. Though population status indicators suggest the need for a slight reduction in bear harvest, bear harvest declined following season reductions in 2009-2011, and it may take a couple more years for the population indicators to reflect the population response to those reductions. Therefore, the agency is reinstating status quo seasons for this unit. Additionally, Aug. 15 was chosen to simplify the season dates by using a constant date rather than a calendar date change every year.
- Change the opening day in the Okanogan and Northeastern B Black Bear Management Units from Aug. 18, 2012, Aug. 17, 2013, and Aug. 16, 2014 to Aug. 15, 2012, Aug. 15, 2013, and Aug. 15, 2014. The reason for the change is to simplify the season closure dates to a constant date rather than a calendar date change every year. There is no biological impact.
- For the Northeastern A black bear management unit, change opening day to Sept. 1 for 2012-2014 seasons. This changes bear season in the unit back to status quo. The reason for this change is the population status indicators suggest the need for a slight reduction in bear harvest; however, bear harvest declined following season reductions in 2009-2011, and it may take a couple more years for the population indicators to reflect the population response to those reductions.

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

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

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

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

Date Adopted: April 14, 2012.

Miranda Wecker, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 11-167, filed 7/22/11, effective 8/22/11)

**WAC 232-28-286 ((2010, 2011)) 2013, 2014, and ((2012)) 2015 Spring black bear seasons and regulations.** It is unlawful to comply with the provisions below. Violators may be punished under RCW 77.15.410, 77.15.245, and 77.15.280 (1)(c).

**Who May Apply:** Anyone with a valid Washington big game license, which includes black bear as a species option.

**Hunt Areas, Permit Levels, and Season Dates for Each License Year:**

<b>Hunt <u>Name</u></b>	<b>Hunt <u>Area</u></b>	<b>Permits</b>	<b>Season <u>Dates</u><sup>b</sup></b>
Sherman	GMU 101	25	April 1 - June 15
Kelly Hill	GMU 105	25	April 1 - June 15
Douglas	GMU 108	20	April 1 - June 15
Aladdin	GMU 111	25	April 1 - June 15
49 Degrees North	GMU 117	((25)) <u>50</u>	April 1 - June 15
Huckleberry	GMU 121	((25)) <u>50</u>	April 1 - June 15
Blue Creek	GMU 154	15	April 15 - May 31
Dayton	GMU 162	15	April 15 - May 31
Tucannon	GMU 166	5	April 15 - May 31
Wenaha	GMU 169	45	April 15 - June 15
Mt. View	GMU 172	15	April 15 - May 31
Lick Creek	GMU 175	15	April 15 - May 31
Couse	GMU 181	4	April 15 - May 31
Grande Ronde	GMU 186	5	April 15 - May 31
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, and Grandy Lake Timber company.	20	April 15 - May 31
Monroe	That portion of GMU 448 that is designated as the hunt area by DNR, ((Green-Crow)) <u>Campbell Group</u> , and Longview Timber Lands.	25	April 15 - May 31
Copalis <sup>a</sup>	That portion of GMU 642 that is designated as the hunt area by Rayonier Timber Company.	100	April 15 - June 15
Kapowsin <sup>a</sup>	That portion of GMUs 653 and/or 654 that is designated as the hunt area by Hancock Forest Management and International Forestry.	150	April 15 - June 15
Lincoln <sup>a</sup>	That portion of GMU 501 that is designated as the hunt area by participating commercial timber landowners.	75	April 15 - June 15

<sup>a</sup>Spring black bear hunting seasons under this area constitute a pilot program to reduce black bear damage to trees.

<sup>b</sup>Permits are valid for the license year they are issued.

**Bag Limit:** One black bear per black bear special permit season.

black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

**License Required:** A valid big game hunting license, which includes black bear as a species option, is required to hunt

**Hunting Method:** Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for



hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

**Submitting Bear Teeth:** Successful bear hunters must submit the black bear premolar located behind the canine tooth of the upper jaw.

AMENDATORY SECTION (Amending Order 10-94, filed 4/30/10, effective 5/31/10)

**WAC 232-28-288 ((2010-2011)) 2012-2014 Fall black bear hunting seasons and regulations.** It is unlawful to fail to comply with the provisions below. Violators may be punished under RCW 77.15.410, 77.15.245, and 77.15.280 (1)(c).

Black Bear Management Unit	Season	Hunt Area
Coastal	Aug. 1 - Nov. 15, ((2010)) <u>2012</u> Aug. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 1 - Nov. 15, 2014</u>	GMUs 501, 504, 506, 530, 601, 602, 603, 607-621, 636-651, 658-663, 672-684
Puget Sound	Aug. 1 - Nov. 15, ((2010)) <u>2012</u> Aug. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 1 - Nov. 15, 2014</u>	GMUs 407, 410, 454, 624, 627, 633, 652, 666, 667
North Cascades	Aug. 1 - Nov. 15, ((2010)) <u>2012</u> Aug. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 1 - Nov. 15, 2014</u>	GMUs 418-450, 460
South Cascades	Aug. ((14)) <u>15</u> - Nov. 15, ((2010)) <u>2012</u> Aug. ((13)) <u>15</u> - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 15 - Nov. 15, 2014</u>	GMUs 466, 485, 503, 505, 510-520, 524, 550-574, 653, 654
Okanogan	Aug. ((14)) <u>15</u> - Nov. 15, ((2010)) <u>2012</u> Aug. ((13)) <u>15</u> - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 15 - Nov. 15, 2014</u>	GMUs 203, 209-243

Black Bear Management Unit	Season	Hunt Area
East Cascades	Aug. 1 - Nov. 15, ((2010)) <u>2012</u> Aug. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 1 - Nov. 15, 2014</u>	GMUs 244-247, 249-251, 328, 329-368, 382, 388, 578
Northeastern A	Sept. 1 - Nov. 15, ((2010)) <u>2012</u> Sept. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Sept. 1 - Nov. 15, 2014</u>	GMUs 101-121, 204
Northeastern B	Aug. ((14)) <u>15</u> - Nov. 15, ((2010)) <u>2012</u> Aug. ((13)) <u>15</u> - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 15 - Nov. 15, 2014</u>	GMUs 124-130
Blue Mountains	Sept. 1 - Nov. 15, ((2010)) <u>2012</u> Sept. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Sept. 1 - Nov. 15, 2014</u>	GMUs 145-154, 162-186
Columbia Basin	Aug. 1 - Nov. 15, ((2010)) <u>2012</u> Aug. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Aug. 1 - Nov. 15, 2014</u>	GMUs 133, 136, 139, 142, 248, 254, 260-290, 371-381
Long Island	Sept. 1 - Nov. 15, ((2010)) <u>2012</u> Sept. 1 - Nov. 15, ((2011)) <u>2013</u> <u>Sept. 1 - Nov. 15, 2014</u>	GMU 699

**Bag Limit:** Two (2) black bear per annual hunting season, only one of which may be taken in Eastern Washington.

**Area Restriction:** Special deer permit required to hunt black bear in GMU 485.

**License Required:** A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option. A second black bear transport tag must be purchased to take a second bear.

**Hunting Method:** Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for

hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

**Submitting Bear Teeth:** Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

### WSR 12-12-010

#### PERMANENT RULES

#### SEATTLE COMMUNITY COLLEGES

[Filed May 24, 2012, 11:54 a.m., effective June 24, 2012]

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

**Purpose:** This permanent rule is in response to an emergency no camping rule the district filed on November 23, 2012 [2011]. The Seattle and King County environmental health services division found a number of health and safety concerns at the Occupy Seattle encampment at Seattle Central Community College. These included foodborne illness risk factors, communicable disease risks in an area adjacent to a child care facility, including animal defecation and urination, rodent activity and syringes and needles on the ground. The report also cited to drug dealing and illicit drug use. There had also been reported use of alcohol in the camp and urination and defecation adjacent to the camp. This overcrowded and unsanitary camp required an emergency rules [rule] to protect the public health, safety, and general welfare of the college community and the inhabitants of Occupy Seattle. This permanent rule prohibits overnight camping, provides hours of operation, and provides due process to the district's trespass rule.

**Citation of Existing Rules Affected by this Order:** Amending WAC 132F-136-030 and 132F-136-050.

**Statutory Authority for Adoption:** RCW 28B.50.140 (13).

Adopted under notice filed as WSR 12-05-109 on February 22, 2012.

**Changes Other than Editing from Proposed to Adopted Version:** The agency is not amending or repealing WAC 132F-136-030 (2) through (12) in response to comments at the rule-making hearings. The agency is not adopting WAC 132F-142-020 and 132F-142-030 (2) through (9), (11) and (12) in response to comments at the rule-making hearings. These permanent rules are being recodified in chapter 132F-136 WAC. The district is changing the hours of operation from 7:00 a.m. to 10:00 p.m. to 6:00 a.m. to 10:00 p.m. and removed the word welfare from WAC 132F-136-050 in response to concerns voiced by the ACLU.

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

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

**Number of Sections Adopted on the Agency's Own Initiative:** New 2, Amended 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:** May 17, 2012.

Jill A. Wakefield, Chancellor  
Seattle Community College  
District VI

**AMENDATORY SECTION** (Amending Order 44, Resolution No. 1984-22, filed 10/10/84)

**WAC 132F-136-030 Limitation of use.** (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) In general, the facilities of the college shall not be rented to, or used by, private or commercial organizations or associations, nor shall the facilities be rented to persons or organizations conducting programs for private gain.

(3) College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department, administrative office or student organization.

(4) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities.

(5) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access has been granted.

(6) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

(7) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.

(8) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.

(9) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed

to do so, except commissioned police officers as prescribed by law.

(10) The right of peaceful dissent within the college community shall be preserved. The college retains the right to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(11) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.

(12) Peaceful picketing and other orderly demonstrations are permitted in public areas and other places set aside for public meetings in college buildings. Where college space is used for an authorized function, such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities, groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.

(13) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.

(14) College and noncollege groups may use the campus for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and the colleges and their campuses are not open to the public except during these times.

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

AMENDATORY SECTION (Amending Order 38, filed 5/27/81)

**WAC 132F-136-050 Trespass.** (1) Individuals who are not students or members of the faculty or staff and who violate ~~((these regulations will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW-))~~ the district's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus

president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or Seattle Municipal Code 12A.08.040.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

~~(3) ((Persons who violate or are in violation of a district policy may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on district property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass-))~~ When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the manager of campus security within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the manager of campus security or designee will be the final decision of the college and should be issued within five work days.

## WSR 12-12-016

### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed May 24, 2012, 2:51 p.m., effective June 24, 2012]

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

Purpose: Establishes new chapter 16-149 WAC, Cottage food operations. This chapter includes the application and renewal of permits; identification of types of nonpotentially hazardous foods; sanitary procedures; facility, equipment, and utensil requirements; labeling specificity; requirements for clean water sources and waste and wastewater disposal; and requirements for washing and other hygienic practices.

Statutory Authority for Adoption: RCW 69.22.020.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-09-034 on April 11, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 14, 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 14, 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: May 24, 2012.

Dan Newhouse  
Director

## Chapter 16-149 WAC

### COTTAGE FOODS

#### NEW SECTION

**WAC 16-149-010 Purpose of this chapter.** The purpose of this chapter is to implement chapter 69.22 RCW by establishing rules relating to the:

(1) Issuance of permits regulating the production of cottage food products in a calendar year to be sold directly to the ultimate consumer.

(2) Conditions under which cottage food products identified in this chapter are prepared, stored and sold. These rules are generally patterned after those established by the state under chapters 16-165 and 16-167 WAC but are tailored specifically to home kitchens.

#### NEW SECTION

**WAC 16-149-020 Definitions.** (1) In addition to the definitions contained in this section and chapter 69.22 RCW, the definitions found in chapters 69.04, 69.06, and 69.07 RCW, chapters 16-165, 16-167, and 246-215 WAC, and Title 21 CFR may apply.

(2) For the purposes of this chapter, the following definitions apply:

**"Adequate"** means that which is needed to accomplish the intended purpose in keeping with good public health practices.

**"Approved source"** means a food source that is routinely and regularly inspected by a regulatory authority.

**"Authorized person"** means a person or persons who work with the cottage food operator in the preparation of cottage food products under this chapter.

**"Baked goods"** means foods that are cooked in an oven.

**"CFR"** means the Code of Federal Regulations.

**"Cottage food operation"** means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

**"Cottage food operation permit"** means a permit to produce and sell cottage food products under chapter 69.22 RCW.

**"Cottage food products"** means nonpotentially hazardous baked goods, jams, jellies, preserves, and fruit butters as defined in 21 CFR 150 as it existed on July 22, 2011; and other nonpotentially hazardous foods identified in WAC 16-149-120.

**"Department"** means the department of agriculture.

**"Director"** means the director of the department of agriculture.

**"Domestic residence"** means a single-family dwelling or an area within a rental unit where a single person or family actually resides. A domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

**"Food worker card"** means a food and beverage service worker's permit as required under chapter 69.06 RCW.

**"Home kitchen"** means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

**"Permitted area"** means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

**"Potable water"** means water that is in compliance with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

**"Potentially hazardous food"** means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

#### NEW SECTION

**WAC 16-149-030 Prerequisites.** (1) All cottage food operations must be permitted annually by the department. The permit will identify a specific listing of the food products allowed to be produced by the cottage food operation.

(2) Prior to permitting, the department will examine the recipes and the premises of the cottage food operation to determine it to be in substantial compliance with the requirements of chapter 69.22 RCW and this rule.

(3) All cottage food operations permitted under this section must include with their application for permit a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the regulatory authority the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspection including the collection of food samples.

(4) A cottage food operation must comply with all applicable county and municipal laws and zoning ordinances that apply to conducting a business from one's home residence prior to permitting as a cottage food operation, including obtaining a master business license.

(5) Any cottage food operation which has a private water supply must have the supply tested at least sixty days prior to permitting and at least annually thereafter and demonstrate through a written record of testing that the water supply is potable.

(6) Prior to permitting, the cottage food operator shall successfully complete a food safety training program and hold a valid food worker card.

#### NEW SECTION

**WAC 16-149-040 Limitations.** (1) If gross sales exceed the maximum annual gross sales allowance of fifteen thousand dollars, the cottage food operation must either

obtain a food processing plant license or cease operations for that calendar year. The department may request, in writing, documentation to verify the annual gross sales figure.

(2) Products produced by a cottage food operation must be sold directly by the cottage food operator to the consumer. Direct sales such as farmers markets, craft fairs, and charitable organization functions are permitted. Sales by internet or mail, consignment, at wholesale, or retail sale outside of the state are prohibited.

(3) A cottage food operation may only produce those specific food products listed on its permit. A copy of this permit shall be displayed at farmers markets, craft fairs, charitable organization functions and any other direct sale locations where cottage foods are sold.

#### NEW SECTION

**WAC 16-149-050 Applications.** (1) To qualify for a new cottage food operator permit issued under chapter 69.22 RCW, the Washington Cottage Food Operator Act, a cottage food operator must first make application to the department.

(2) By applying for a cottage food operation permit, the applicant acknowledges the jurisdiction of the department and state of Washington in all matters related to the cottage food operation.

(3) By applying for a cottage food operation permit, the applicant recognizes the authority of the department under RCW 69.22.060 and expressly grants the department or other inspection agent approved by the department the right to enter the applicant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the cottage food operation products, ingredients, or packaging materials are stored, produced, packaged, or labeled;

(b) Inspect records related to the sales, storage, production, packaging, or labeling of the cottage food operation products, ingredients, or packaging materials; and

(c) Obtain samples of cottage food operation products, ingredients, or packaging materials.

(4) Inspections may be conducted as a condition of ongoing permitting, after receiving an initial or a renewal application, upon notification of a change to an application, upon receipt of a complaint, or as required to enforce or administer chapter 69.22 RCW and this chapter. Inspections may be announced or unannounced.

(5) The department shall deny applications for permit where the applicant refuses to allow the inspection of the premises or records, fails to provide samples as provided in this section, or fails to provide the department with the consent described in subsection (3) of this section, or fails to provide the department with all required application information.

#### NEW SECTION

**WAC 16-149-060 Application requirements.** (1) Applications must be submitted on the form provided by the department, and must include:

(a) A completed application form.

(b) A diagram of the cottage food operation premises identifying what areas of the residence will be used for the cottage food activities.

(i) The diagram must clearly identify and show the location of all cottage food operation preparation equipment, contact work surfaces, equipment washing and sanitizing sinks or tubs, primary toilet room, handwashing areas, and storage areas.

(ii) Everything illustrated on the diagram must be clearly labeled.

(c) A copy of all recipes and a description of the processing steps and packaging step.

(d) Examples of all product labels.

(e) The proposed cottage food operational dates of processing for the current year.

(f) A description of the types of sales or a list of the proposed sale locations for the current year.

(g) Documentation verifying that the water used at the cottage food operation site complies with the requirements of this chapter. For a well, spring or other private water supply, the water must have a passing bacterial test conducted within sixty days of submitting an application to the department. A copy of the test results must be attached to the permit application.

(h) A copy of the applicant's food worker card and that of any other persons who will be conducting cottage food operation food processing.

(i) If pets are present at the location, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours and exclusion from storage areas must be submitted.

(j) If infants or children under six years of age are present at the location, a child control plan that precludes child entry/access to all areas of the cottage food operation during operating hours must be submitted.

(2) The department must receive the completed cottage food operation application packet along with check or money order for the permit fee at least six weeks before processing. In accordance with RCW 69.22.030(1) and 69.22.040(3), the fees for the permit are seventy-five dollars for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing the application and permit for one year.

(3) Once the department receives the cottage food operation application, a public health review of all recipes and proposed labels will occur. Then the applicant will be contacted for an on-site inspection before a cottage food operation permit can be further processed or issued.

(4) If the result of the on-site permitting inspection is unsatisfactory, the applicant will need to submit documentation to the department as to how they corrected the issue(s) and submit one hundred twenty-five dollars for the additional inspection before the department will return to again inspect for permit approval.

(5) Once received, the cottage food operation permit must be prominently and conspicuously posted at all points of sale location where customers can see it.

(6) Applicants are prohibited from preparing and selling cottage food products regulated by this chapter until they receive their cottage food operation permit.

(7) Cottage food operation permits must be obtained annually and expire on January 31st following issuance. Cottage food operation permits obtained during 2012 will not expire until January 31, 2014.

(8) The department will not refund application fees after receipt of a cottage food operation application.

(9) To obtain an application for a cottage food operation permit, contact the department at:

Washington State Department of Agriculture  
Food Safety Consumer Services Division  
P.O. Box 42560  
Olympia, WA 98504-2560  
Phone: 360-902-1876  
Fax: 360-902-2087  
Web site <http://agr.wa.gov>.

#### NEW SECTION

**WAC 16-149-070 Amendment requirements to permit.** (1) Amendments to an existing cottage food permit after issuance within a calendar year require a new application and application fee. Amendments requiring a new application include the addition of new products, when recipes changes occur, or when the premises areas change.

(2) At a minimum, the department must conduct the public health review of all new food products, process a new permit and conduct an inspection of the cottage food premises before any new additional cottage food products can be allowed.

(3) If a cottage food operator wishes to add new products to his or her permit, an application amendment must be submitted to the department.

(4) An application amendment will contain the same information as outlined in WAC 16-149-060 and on a form provided by the department.

(5) If there are no significant changes to the premises, the department will require the public health review of all new recipes submitted for review, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of seventy-five dollars for the public health review and thirty dollars for processing for the permit.

(6) If there are significant changes to the premises, the department will require the public health review of all new recipes submitted for review, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of seventy-five dollars for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing for the permit.

(7) Significant change under this section means any change in the premises previously submitted to and inspected by the department under this chapter which is substantial enough in the department's judgment to require reinspection and approval. This includes, but is not limited to:

(a) Structural changes within the cottage food operation's premises such as a remodel or addition to the home that affects the cottage food operation areas previously inspected.

(b) Additional locations within the premises that are now intended to be used for portions of the cottage food opera-

tions that were not previously inspected. For example: A basement storage area is now planned to be utilized for storage of finished products. This basement area was not originally part of the permitted area and not previously inspected by the department.

#### NEW SECTION

**WAC 16-149-080 Production requirements.** (1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit.

(b) Provide for food contact surfaces that are smooth and easily cleanable.

(c) Maintain acceptable sanitary standards and practices.

(i) Carpeting and rugs are not approved flooring material in the cottage food operation home kitchen preparation area. Cleanable impermeable floor mats are allowed in the cottage food operation home kitchen area.

(ii) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(iii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iv) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(v) Pump hand soap and disposable paper towels must be available and used in the identified primary toilet room and home kitchen area by all persons working in the home kitchen.

(vi) When food must be left out uncovered on kitchen counters or table due to processing steps such as cooling, active controls must be in place to prevent inadvertent contamination by children or pets. Active controls can include presence of the permittee or an employee or use of child/pet barriers, etc.

(vii) If the cottage food operator owns pets, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours must be in place.

(viii) No infants or children under six years of age can be present in the cottage food operation home kitchen during processing. A child barrier may be used to prevent access to the cottage food processing area during operating hours.

(d) Provide separate storage from domestic storage, including separate refrigerated storage.

(e) Provide for annual bacterial test of water supplies if not connected to a public water system.

(2) A cottage food production operation is not required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven; or

(c) Have a separate kitchen.

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food.

(b) Allowing pets (including dogs, cats, birds, reptiles, etc.) in the kitchen production and packaging areas.

(c) Washing out or cleaning pet cages, pans and similar items in the kitchen, even when the kitchen is not in use for cottage food production.

(d) Pet litter boxes cannot be stored or used in any area of the cottage food operation. This includes food storage areas.

(e) Allowing entry of any person other than persons processing, preparing, packaging, or handling cottage food under the direct supervision of the permittee into the home kitchen area while producing food.

(4) A cottage food product must be prepared by following the recipe that was submitted for department approval. The recipe must be available on the premises for review by the department.

#### NEW SECTION

**WAC 16-149-090 Inspections.** (1) In addition to inspections required for permit applications or amendments, the department may inspect the permitted area of a cottage food operation whenever the department has reason to believe the cottage food operation is in violation of the requirements of chapter 69.22 RCW or this chapter. Inspections will be made at reasonable times and, when possible, during regular business hours.

(2) The department may also inspect the permitted area of a cottage food operation in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.

(3) When conducting an inspection, the department shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that only those specific foods identified on the permit for the cottage food operation may be produced;

(b) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparation, packaging, or handling of any cottage food products or be in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(c) That no cottage food processing, preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(d) That no infants or children under the age of six are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(e) That no pets are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(f) That only typical residential style of kitchen equipment and utensils are used to produce cottage foods;

(g) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use:

(i) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(ii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iii) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(h) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(i) That all persons involved in the preparation and packaging of cottage food products:

(i) Have a valid food handler worker card;

(ii) Do not work in the home kitchen area when ill;

(iii) Wash their hands before any food preparation and food packaging activities;

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils; and

(v) Are under the direct supervision of the permittee.

#### NEW SECTION

**WAC 16-149-100 Recordkeeping requirements.** (1) At a minimum, the following records must be kept at the cottage food operation:

(a) Copies of all food handler worker cards;

(b) Copy of the master business license;

(c) All cottage food product recipes that are allowed by the department and listed on the current cottage food operation permit;

(d) The water testing records if required by this chapter;

(e) Documentation that ingredients were obtained from approved sources; and

(f) Documentation of gross sales and any off-site sale locations.

(2) All records required under subsection (1) of this section must be:

(a) Maintained so that the information they intend to convey is clear and understandable;

(b) Available at the operation and available to the department inspectors upon request; and

(c) Retained at the operation for six months after the expiration of the permit.

#### NEW SECTION

**WAC 16-149-110 Labeling.** (1) A cottage food operation may only sell cottage food products which are prepackaged (except for certain products as outlined in subsection (2) of this section) with a label affixed that contains the following information (printed in English):

(a) The name and address of the business of the cottage food operation;

(b) The name of the cottage food product;

(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product, metric weight is not required;

(e) Allergen information as specified by federal labeling requirements;

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and

(g) The following statement printed in at least the equivalent 11-point type in a color that provides a clear contrast to the background label: "Made in a Home Kitchen that has not been subject to standard inspection criteria." A label sample is shown below.

**MADE IN A HOME KITCHEN THAT HAS NOT BEEN SUBJECT TO STANDARD INSPECTION CRITERIA**

**Chocolate Chip Cookies**

Ashley Bryant  
2550 Kingston Lane  
Seattle, WA 98102

**Ingredients:** Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin as an emulsifier), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.

**Contains: Wheat, eggs, milk, soy, walnuts.**

(2) The department may allow large cakes or a container of bulk products to be handled and labeled in the following manner:

(a) Be protected from contamination during transportation to the consumer.

(b) Have a product label sheet with all the required information as listed in subsection (1) of this section provided to the consumer.

NEW SECTION

**WAC 16-149-120 Allowable cottage food products.** A cottage food operation is allowed to produce food items that are nonpotentially hazardous. Subsection (1) of this section lists acceptable cottage food products. Although this list is not all inclusive, it provides for most types of approved cottage food products. Only those products approved by the department and listed in the permit may be produced:

(1) Baked good products that are cooked in an oven including:

(a) Loaf breads, rolls, biscuits, quick breads, and muffins;

(b) Cakes including celebration cakes such as birthday, anniversary, and wedding cakes;

(c) Pastries and scones;

(d) Cookies and bars;

(e) Crackers;

(f) Cereals, trail mixes and granola;

(g) Candies and confections that are cooked in an oven;

(h) Pies, except that custard style pies, pies with fresh fruit that is unbaked or pies that require refrigeration after baking are not approved;

(i) Nuts and nut mixes; and

(j) Snack mixes.

(2) Standardized jams, jellies, preserves and fruit butters as identified under 21 CFR 150.

(a) Fresh picked or harvested fruits from noncommercial sources are allowed to be used.

(b) Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation.

(c) All recipes must have a cook step included such as a hot fill or hot water bath. No freezer or refrigerator style products are allowed.

(d) All jams, jellies, preserves and fruit butters must be sealed in containers that are sterilized prior to filling.

(e) Wax paraffin is not allowed to be used for sealing.

(3) Recombining and packaging of dry herbs, seasoning and mixtures that are obtained from approved sources (e.g., dry bean soup mixes, dry teas and coffees, spice seasonings, etc.).

(4) Vinegar and flavored vinegars.

(5) The recipe for each product must be submitted with the application, kept on file at the cottage food operation location and recipes are subject to public disclosure.

(6) Fresh picked or harvested fruits from noncommercial sources are allowed to be used. Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation as long as there is a cook step in the recipe.

(7) All frostings or glazes must have a cook step or be made with ingredients (such as a large amount of sugar) that when combined are stable at room temperature.

NEW SECTION

**WAC 16-149-130 Prohibited products.** This section lists unacceptable cottage food products. Although not inclusive, it lists most types of unapproved cottage food products:

- Fresh or dried meat or meat products including jerky;
- Fresh or dried poultry or poultry products;
- Canned fruits, vegetables, vegetable butters, salsas, etc.;

- Fish or shellfish products;

- Canned pickled products such as corn relish, pickles, sauerkraut;

- Raw seed sprouts;

- Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream or cream cheese fillings, fresh fruit fillings or garnishes, glazes or frostings with low sugar content, cream, or uncooked eggs;

- Tempered or molded chocolate or chocolate type products;

- Milk and dairy products including hard, soft and cottage cheeses and yogurt;

- Cut fresh fruits or vegetables;

- Food products made from cut fresh fruits or vegetables;

- Food products made with cooked vegetable products;

- Garlic in oil mixtures;

- Juices made from fresh fruits or vegetables;

- Ice or ice products;

- Barbeque sauces, ketchups, or mustards;

- Focaccia-style breads with vegetables or cheeses.

NEW SECTION

**WAC 16-149-140 Suspension, revocation, and denial of registrations.** (1) A cottage food operation permit and



applications for cottage food operation permits are governed by chapter 34.05 RCW.

(2) After conducting a hearing, the director may deny, suspend, or revoke a cottage food operation application or permit if it is determined that an applicant or permittee has committed any of the following acts:

(a) Failed to meet the permitting requirements established under chapter 69.22 RCW or this chapter;

(b) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(c) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(d) Consistent with RCW 69.22.060, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;

(e) Consistent with RCW 69.22.060, refused the department access to any records required to be kept under the provisions of this chapter; or

(f) Exceeded the annual income limits provided in WAC 16-149-040.

(3) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.

### WSR 12-12-025

#### PERMANENT RULES

#### PUGET SOUND

#### CLEAN AIR AGENCY

[Filed May 25, 2012, 11:45 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Provide a wider range of options to conduct reasonably available control technology (RACT) analyses and allow for cost recovery on any RACT analysis and determination that more closely matches level of effort.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 3.04.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-09-066 on April 17, 2012.

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

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

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

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

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

Date Adopted: May 24, 2012.

Craig Kenworthy  
Executive Director

### AMENDATORY SECTION

#### **REGULATION I, SECTION 3.04 REASONABLY AVAILABLE CONTROL TECHNOLOGY**

(a) Reasonably Available Control Technology (RACT) is required for all existing sources.

(b) RACT for each source category containing 3 or more sources shall be determined by rule by the Department of Ecology or the Agency, except as provided in Section 3.04(c) of this regulation.

(c) Source-specific RACT determinations may be performed under any of the following circumstances:

(1) For replacement of existing control equipment under Article 6 of this regulation;

(2) When required by the federal Clean Air Act;

(3) For sources in source categories containing fewer than 3 sources;

(4) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(5) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

(d) ~~((Under any of the circumstances listed in Section 3.04(e) of this regulation, (t))~~The Control Officer or a duly authorized representative shall have the authority to perform a ~~((source-specific))~~ RACT determination: ((analysis)) to hire a consultant to perform relevant RACT analyses in whole or in part; or to order the owner or operator to perform RACT analyses ((the analysis)) and submit the results to the Agency.

(e) The Agency shall assess a fee to be paid by any source included or covered in a RACT determination to cover the direct and indirect costs of developing, establishing or reviewing categorical or source-specific RACT determinations. ((In the event that the Agency performs a source-specific RACT analysis of a source, the Agency shall assess a fee against that source to cover the cost of performing the analysis.)) The fee for RACT determinations ((an analysis performed by the Agency)) shall be \$150 ~~((5,000.00))~~ an hour. For categorical RACT determinations, the amount of the fees to be paid by a source shall not exceed a source's pro rata portion as determined by the Agency. In addition, where the Agency hires a consultant to prepare RACT analyses, in whole or in part, pursuant to Section 3.04(d), the source shall be responsible for the consultant's fees. ((Replacement of control equipment under Section 3.04 (e)(1) shall be subject to the notice of construction review fees under Section 6.04,

in lieu of a RACT fee under this section.) This f) Fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) Where current controls are determined to be less than RACT, the Agency shall define RACT for that source or source category and issue a rule or a regulatory order under Section 3.03 of this regulation requiring the installation of RACT.

(g) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of permit issuance or renewal.

(h) Replacement of control equipment under Section 3.04 (c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of RACT fees under this section.

**WSR 12-12-026**  
**PERMANENT RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed May 25, 2012, 11:46 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Increase registration fees and emission fees to reflect an increase in program costs, which are attributable to cost-of-living increases and inflationary impacts. Also, this proposal would eliminate the late provision for invoices not paid within forty-five days.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 5.07.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-09-067 on April 17, 2012.

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

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

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

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

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

Date Adopted: May 24, 2012.

Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 5.07 ANNUAL REGISTRATION FEES**

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice (~~and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000~~). Persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,150 (~~(1,000)~~), plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$2,100 (~~(1,750)~~) per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,300 (~~(2,000)~~);

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$30 (~~(25)~~) for each ton of CO and \$60 (~~(50)~~) for each ton of NOX, PM10, SOX, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,300 (~~(2,000)~~);

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$5,750 (~~(5,000)~~); and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$23,000 (~~(20,000)~~).

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons . . . . \$4,085 (~~(3,550)~~);
- (2) 3,600,001 to 6,000,000 gallons . . . \$2,030 (~~(1,765)~~);
- (3) 1,200,001 to 3,600,000 gallons . . . \$1,350 (~~(1,175)~~);
- (4) 840,001 to 1,200,000 gallons . . . . . \$675 (~~(590)~~);
- (5) 200,001 to 840,000 gallons . . . . . \$340 (~~(295)~~).

(e) The following registered sources shall be assessed an annual registration fee of \$140 (~~(120)~~), provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

- (1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;
- (2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;
- (3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
- (4) Unvented dry cleaners using perchloroethylene; and
- (5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

**WSR 12-12-027  
PERMANENT RULES  
PUGET SOUND  
CLEAN AIR AGENCY**

[Filed May 25, 2012, 11:47 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Adjust the notice of construction fee schedule to include cost increases for existing transactions, and the addition of some new fee elements unique to certain project proposals.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 6.04.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-09-068 on April 17, 2012.

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

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

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

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

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

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

Date Adopted: May 24, 2012.

Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 6.04 NOTICE OF CONSTRUCTION FEES**

(a) A Notice of Construction application is incomplete until the Agency has received fees as shown below:

Filing Fee (for each application, to be paid prior to any review) . . . . .	<u>\$1,150</u> ( <del>(1,000)</del> )
Coffee Roaster (less than 40 pounds/batch, with thermal oxidizer) . . . . .	<u>\$600</u> ( <del>(500)</del> )
Hot Mix Asphalt Batch Plant . . . . .	<u>\$8,000</u> ( <del>(7,000)</del> )
Soil Thermal Desorption Unit . . . . .	\$5,000
Electric Generation Project: (combined heat input capacity)	
10 - 100 million Btu/hr . . . . .	\$5,000
101 - 250 million Btu/hr . . . . .	\$10,000
>250 million Btu/hr . . . . .	\$25,000
Composting Facility . . . . .	\$10,000
Commercial Solid Waste Handling Facility . . . . .	\$10,000
Landfill Gas System . . . . .	\$2,500
Refuse Burning Equipment: (rated charging capacity)	
≤12 tons per day . . . . .	\$5,000
>12 tons and ≤250 tons per day . . . . .	\$20,000
>250 tons per day . . . . .	\$50,000
Other (not listed above) for each Piece of Equipment and Control Equipment . . . . .	<u>\$600</u> ( <del>(500)</del> )
Additional Charges (for each application):	
SEPA Threshold Determination . . . . .	<u>\$800</u> ( <del>(700)</del> )
(DNS, under Regulation I, Section 2.04)	
SEPA Threshold Determination . . . . .	<u>\$4,000</u> ( <del>(1,500)</del> )
(MDNS, under Regulation I, Section 2.07)	
<u>Document Collection to Support Conclusion that SEPA Requirements were met by a Previous Environmental Review (not provided by applicant) . . . . .</u>	<u>\$800</u>
(See WAC 197-11-600)	
Public Notice . . . . .	<u>\$700</u> ( <del>(500)</del> )
(under WAC 173-400-171) . . . . .	(+ publication costs)
Public Hearing . . . . .	<u>\$2,000</u> ( <del>(500)</del> )
(under WAC 173-400-171) . . . . .	(+ publication costs, if separate public notice)
NSPS or NESHAP . . . . .	\$1,000
(per subpart of 40 CFR Parts 60, 61, and 63)	
<u>Iterative Screening Dispersion Modeling Analysis by Agency (not provided by applicant) . . . . .</u>	<u>\$1,000</u>
(under Regulation III, Section 2.07 (c)(1)(B))	
Refined Dispersion Modeling Analysis <u>Review</u> . . . . .	<u>\$1,000</u> ( <del>(700)</del> )
(under Regulation III, Section 2.07 (c)(1)(C))	
Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD) Thresholds . . . . .	\$5,000
	(+ Ecology fees)

An Agency request for an Inapplicability Determination for PSD Program Requiring Written Applicability Determination from Ecology. . . . . \$5,000 (+ Ecology fees)

Establishing Voluntary Limits on Emissions for Synthetic Minor Source Status, Concurrent with Notice of Construction Application Review. . . . . \$2,000 (See WAC 173-400-091)

Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2). . . . . \$2,500 Tier II Air Toxics Review. . . . . \$5,000 (under WAC 173-460-090) (+ Ecology fees)

Opacity/Grain Loading Correlation . . . . . \$5,000

(b) A notification under Section 6.03 (b)(1) through Section 6.03 (b)(9) and 6.03 (b)(11) of this regulation is incomplete until the Agency has received a fee of \$200 (~~(+400)~~). An application processed as a Notice of Construction exemption under Section 6.03 (b)(10) requires payment of the Notice of Construction filing fee only. An application for coverage under a general order of approval issued by this Agency is not subject to the fees in Section 6.04(a) and instead requires payment of a \$500 fee, which is due prior to any review of the application.

(c) The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant as provided in RCW 70.94.085.

(d) Additional Fee for Service - Second Incomplete Application

Upon receipt of a second incomplete Notice of Construction application from the same applicant for the same project, the Control Officer may cease review of the application and provide written notification of that determination. The Control Officer may resume review of the application if, within 30 days of the date of the notification describing the Agency's receipt of the second incomplete Notice of Construction application, the applicant has deposited \$1,000 with the Agency, and executed a fee-for-service agreement with the Agency that allows the Agency to recover the reasonable direct and indirect costs that arise from processing the Notice of Construction application, including the requirements of other relevant laws such as the Washington State Environmental Policy Act (SEPA).

The agreement shall require that the applicant assume full responsibility for paying the Agency for the costs incurred under the fee-for-service agreement. The Agency shall credit the \$1,000 deposit made by the applicant towards the costs required by a fee-for-service agreement. The fee-for-service agreement may require the applicant to make progress payments during the application review period. The \$1,000 deposit referred to in this section and the costs provided for in a fee-for-service agreement are in addition to the fees required in Section 6.04(a).

If the applicant has not made a \$1,000 deposit and executed such a fee-for-service agreement within 30 days of the date of the notification from the Agency describing its receipt of a second incomplete application, the Agency may issue an Intent to Disapprove an Application.

The \$1,000 deposit required under this section is not refundable. In addition, any payments made to the Agency under a fee-for-service agreement are not refundable.

(e) Additional Fee - Revised Application

The Control Officer may assess an additional fee for processing a Notice of Construction application when a subsequent significantly revised application is submitted after the original application was determined to be complete and prior to the Agency issuing an Order of Approval or Intent to Disapprove an Application regarding the original application. The revision fee shall be the amount of the fee that was charged for the original Notice of Construction application, including the filing fee. The resulting total fee is the fee for the original Notice of Construction application plus the revision fee.

**WSR 12-12-028  
PERMANENT RULES  
PUGET SOUND  
CLEAN AIR AGENCY**

[Filed May 25, 2012, 11:49 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Increase the base fees and emission fees for all operating permit sources, and increase permit transaction fees.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 7.07.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 12-09-069 on April 17, 2012.

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

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

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

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

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

Date Adopted: May 24, 2012.

Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 7.07 OPERATING PERMIT FEES**

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if

not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$6,500 ((5,000)). In addition, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, 1997), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b)(1)(i) or 7.07 (b)(1)(ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
221112	Fossil Fuel Electric Power Generation	
324110	Petroleum Refineries	
327213	Glass Container Manufacturing	
327310	Cement Manufacturing	
331111	Iron and Steel Mills	
336411	Aircraft Manufacturing	
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing	
928110	National Security	
	.....	\$57,200 ((44,000))

(ii) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
311119	Other Animal Food Manufacturing	
311812	Commercial Bakeries	
321912	Cut Stock, Resawing Lumber, and Planing	
321918	Other Millwork (including Flooring)	
321999	All Other Miscellaneous Wood Product Manufacturing	
322222	Coated and Laminated Paper Manufacturing	
326140	Polystyrene Foam Product Manufacturing	
327121	Brick and Structural Clay Tile Manufacturing	
332996	Fabricated Pipe and Pipe Fitting Manufacturing	
	.....	\$14,300 ((11,000))

(iii) Operating permit sources with NAICS codes other than listed above. . . . . \$28,600 ((22,000))

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b)(1):

\$30 ((25)) for each ton of CO reported in the previous calendar year, and

\$60 ((50)) for each ton of NOx reported in the previous calendar year, and

\$60 ((50)) for each ton of PM10 reported in the previous calendar year, and

\$60 ((50)) for each ton of SOx reported in the previous calendar year, and

\$60 ((50)) for each ton of VOC reported in the previous calendar year, and

\$60 ((50)) for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b)(1) and (b)(2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) \$500 ((250)) for administrative permit amendments [WAC 173-401-720], and

(2) for minor permit modifications [WAC 173-401-725 (2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed \$6,500 ((5,000)), and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$13,000 ((10,000)), and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

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

**WSR 12-12-031**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 (Community Services Division)

[Filed May 29, 2012, 1:15 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: The community services division is amending WAC 388-310-0200 WorkFirst—Activities.

Effective July 1, 2012, the department is eliminating the WorkFirst (WF) participation suspension and restoring WF participation requirements for individuals who have taken the suspension from July 1, 2011, through June 30, 2012, as required under ESSB 5921, Laws of 2011. Adults taking the WF suspension will be reengaged in WF participation in a priority order, beginning with those recipients closest to reaching the TANF time limit.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0200.

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

Other Authority: ESSB 5921, chapter 42, Laws of 2011 1st sp. sess.

Adopted under notice filed as WSR 12-09-092 on April 4 [18], 2012.

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

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

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

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

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

Date Adopted: May 24, 2012.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-22-062, filed 10/29/10, effective 12/1/10)

**WAC 388-310-0200 WorkFirst—Activities. (1) Who is required to participate in WorkFirst activities?**

(a) You are required to participate in the WorkFirst activities in your individual responsibility plan, and become what is called a "mandatory participant," if you:

(i) Are receiving TANF or SFA cash assistance because you are pregnant or the parent or adult in the home; and

(ii) Are not exempt. For exemptions see WAC 388-310-0300 and 388-310-0350.

(b) Participation is voluntary for all other WorkFirst participants (those who no longer receive or have never received TANF or SFA cash assistance).

(c) If you are a mandatory participant who was suspended from WorkFirst participation under RCW 74.08A.-260 (8)(a), the department will restore your participation requirements between July 1, 2012 and June 30, 2013 in a priority order, beginning with participants who are closest to reaching their TANF time limit.

**(2) What activities do I participate in when I enter the WorkFirst program?**

When you enter the WorkFirst program, you will participate in one or more of the following activities (which are described in more detail in other sections of this chapter):

(a) Paid employment (see WAC 388-310-0400 (2)(a) and 388-310-1500);

(b) Self employment (see WAC 388-310-1700);

(c) Job search (see WAC 388-310-0600);

(d) Community jobs (see WAC 388-310-1300)

(e) Work experience (see WAC 388-310-1100);

(f) On-the-job training (see WAC 388-310-1200);

(g) Vocational educational training (see WAC 388-310-1000);

(h) Basic education activities (see WAC 388-310-0900);

(i) Job skills training (see WAC 388-310-1050);

(j) Community service (see WAC 388-310-1400);

(k) Activities provided by tribal governments for tribal members and other American Indians (see WAC 388-310-1400(1) and 388-310-1900);

(l) Other activities identified by your case manager on your individual responsibility plan that will help you with situations such as drug and/or alcohol abuse, homelessness, or mental health issues; and/or

(m) Activities identified by your case manager on your individual responsibility plan to help you cope with family violence as defined in WAC 388-61-001; and/or

(n) Up to ten hours of financial literacy activities to help you become self-sufficient and financially stable.

**(3) If I am a mandatory participant, how much time must I spend doing WorkFirst activities?**

If you are a mandatory participant, you will be required to participate in the activities in your individual responsibility plan, and may be required to participate full time, working, looking for work or preparing for work. You might be required to participate in more than one part-time activity at the same time that adds up to full time participation. You will have an individual responsibility plan (described in WAC 388-310-0500) that includes the specific activities and requirements of your participation.

**(4) What activities do I participate in after I get a job?**

You may be required to participate in other activities, such as job search or training once you are working twenty hours or more a week in a paid unsubsidized job, to bring your participation up to full time.

You may also engage in activities if you are working full time and want to get a better job.

## WSR 12-12-032

### PERMANENT RULES

### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 29, 2012, 1:35 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Revisions to this rule are necessary in order to:

(1) Implement 42 C.F.R. 455.410 which mandates states to require all ordering, prescribing, or referring providers to be enrolled as participating providers under the billing providers' core provider agreement in order to receive payment.

(2) Clarify language regarding the core provider agreement effective date, when a provider may ask for an effective date earlier than the agency's approval of the provider application, and how far back the agency's chief medical officer may authorize an effective date under the exceptions. This clarification is necessary to allow medicaid provider entities that are subject to survey and certification by the Centers for Medicare and Medicaid Services or the state survey agency, a reasonable amount of time to submit their medicare certification letters to the agency.

Citation of Existing Rules Affected by this Order:  
Amending WAC 182-502-0005.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 42 C.F.R. 455 subpart E Provider Screening and Enrollment requirements.

Adopted under notice filed as WSR 12-07-028 on March 13, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: May 29, 2012.

Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-502-0005 Core provider agreement (CPA).** (1) ~~((All healthcare))~~ The agency only pays claims submitted by or on behalf of a health care professional(s), (healthcare entities) health care entity, supplier(s) or contractor(s) of service ((must have)) that has an approved core provider agreement (CPA) with the agency or ((be enrolled as)) is a performing provider on an approved CPA ((to provide healthcare services to an eligible medical assistance client; otherwise any request for payment will be denied)) with the agency.

(2) ~~((For services provided out of state refer to WAC 388-501-0180, 388-501-0182 and 388-501-0184.~~

(3) ~~All performing providers of services to a medical assistance client must be enrolled under the billing provider's CPA.~~

~~(4) The department does not pay for services provided to clients during the CPA application process, regardless of whether the CPA is later approved or denied, except as provided in subsection (5) of this section.~~

~~(5) Enrollment of a provider applicant is effective no earlier than the date of approval of the provider application.~~

~~(a) Any exceptions must be requested in writing to the medicaid director with justification as to why the applicant's effective date should be prior to the CPA approval date. The requested effective date must be noted and must be covered by any applicable license or certification submitted with this application. Only the medicaid director or the medicaid director's written designee may approve exceptions. Exceptions will only be considered for the following:~~

~~(i) Emergency services;~~

~~(ii) Department approved out of state services;~~

~~(iii) Retroactive client eligibility; or~~

~~(iv) Other critical department need as determined by the medicaid director or the medicaid director's written designee.~~

~~(b) For federally qualified health centers (FQHCs), see WAC 388-548-1200. For rural health clinics (RHCs), see WAC 388-549-1200.) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.~~

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process, regardless of whether the agency later approves or denies the CPA application, except as provided in subsection (6) of this section.

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(c) For federally qualified health centers (FOHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

**WSR 12-12-033**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 29, 2012, 1:47 p.m., effective June 29, 2012]

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

Purpose: Amends WAC 181-78A-100 to provide for off-site reviews of approved preparation programs. Requires an institutional report to facilitate the off-site review.

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

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 12-08-054 on April 3, 2012.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, 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 0, Repealed 0.

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

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

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

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

Date Adopted: May 10, 2012.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-028, filed 12/28/11, effective 1/28/12)

**WAC 181-78A-100 Existing approved programs.** Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

~~((1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 181-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into~~

~~teacher preparation programs on or before August 31, 2000, to obtain certification by meeting requirements of programs approved under approval standards described in chapter 181-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003. Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.~~

~~(2) All principal/program administrator programs shall be reviewed for approval under the 2002 program approval standards of chapter 181-78A WAC by August 31, 2004. Colleges and universities may permit individuals accepted into principal/program administrator programs on or before August 31, 2004, to obtain a residency certificate by meeting requirements of programs approved under 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2006, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2006. Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.~~

~~(3) All school counselor or school psychologist programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor or school psychologist programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.~~

~~(4) Individuals who completed a principal/program administrator program on or before August 31, 2004, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2004. Individuals who complete an educational staff associate program on or before August 31, 2005, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2005.~~

~~(5) Institutions shall be given at least one year notification prior to a professional educator standards board review for compliance with these standards. Provided, That if an institution requests a visit with less than a year's notice, the professional educator standards board shall consider that request.~~

~~(6))~~ (1) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under ~~((the 1997))~~ program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such agreement relates to the NCATE



accreditation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2).

~~((7))~~ (2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards ~~((and to provide assessment data relative to the performance standards to the professional educator standards board for the year prior to the site visit.))~~ as follows:

(a) At least six months prior to a scheduled on-site visit, the institution(s) shall ~~((follow professional educator standards board posted timelines to))~~ submit an institutional report that ~~((shall:~~

(i) ~~Describe how the program approval standards are met for each educator preparation program scheduled for review (NCATE reports may fulfill this requirement);~~

(ii) ~~Describe how "unmet" standards or program weaknesses, identified during the previous site visit, have been corrected;~~

(iii) ~~Describe major program(s) changes implemented since the last site visit;~~

(iv) ~~Summarize all WEST-E data since the last site visit;~~

(v) ~~Summarize all program completion survey data compiled since the last site visit;~~

(vi) ~~Include all professional education advisory board reports submitted since the last site visit;~~

(vii) ~~Summarize complaints related to the program(s) and actions taken to remedy the complaints; and~~

(viii) ~~Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge and skills, including evidence of positive impact on student learning))~~ provides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) ~~The~~ ~~((site visit))~~ institutional report shall be ~~((conducted))~~ reviewed by ~~((a))~~ an off-site team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A designated professional educator standards board staff member who shall serve as team leader.

(vi) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be pres-

ent, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

~~((c))~~ ~~The~~ ~~((site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board))~~ review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

~~((d))~~ ~~The~~ ~~((final site visit report and other appropriate documentation will be submitted to the professional educator standards board))~~ report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

~~((e))~~ The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team.

~~((f))~~ The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

~~((g))~~ Institutions may submit a reply to the report within two weeks following receipt of the report. The reply may address issues for consideration, including a request for appeal per this subsection (g) ~~((of this section))~~, limited to factual errors, evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

~~((h))~~ ~~(h)~~ In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100~~((6))~~ (1).

~~((g))~~ ~~(i)~~ Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

~~((8))~~ (3) Institutions seeking National Council for the Accreditation of Teacher Education, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

## WSR 12-12-034

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed May 30, 2012, 8:52 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: This order suspends partial licensing fees in an effort to maintain a balanced budget for the landscape architect licensing program.

Citation of Existing Rules Affected by this Order:  
Amending WAC 308-13-150 What are the landscape architect fees and charges?

Statutory Authority for Adoption: Chapter 18.96 RCW.  
Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 12-09-048 on April 16, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: May 30, 2012.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-12-116, filed 6/2/10, effective 7/3/10)

**WAC 308-13-150 What are the landscape architect fees and charges?** (1) Suspension of fees. Effective July 1, 2012, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

<u>Title of Fee</u>	<u>Fee</u>
<u>Application fee</u>	<u>\$225.00</u>
<u>Renewal (2 years)</u>	<u>360.00</u>
<u>Late renewal penalty</u>	<u>120.00</u>
<u>Initial license (2 years)</u>	<u>360.00</u>
<u>Reciprocity application fee</u>	<u>325.00</u>

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2016.

(2) The following fees will be collected:

<u>Title of Fee</u>	<u>Fee</u>
Application fee	\$250.00
Renewal (2 years)	450.00
Late renewal penalty	150.00
Duplicate license	25.00
Initial license (2 years)	450.00
Reciprocity application fee	450.00
Replacement wall certificate	20.00

You will submit any examination fees directly to CLARB.

**WSR 12-12-036**

**PERMANENT RULES**

**TRANSPORTATION COMMISSION**

[Filed May 30, 2012, 10:27 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: The commission is required to establish toll rates and fees for vehicles using the Tacoma Narrows Bridge (TNB) that are adequate to cover debt, operations, insurance and maintenance costs. The purpose of the proposed rules is to amend the transportation commission administrative code, WAC 468-270-070, establishing new toll rates on the TNB.

Citation of Existing Rules Affected by this Order:  
Amending WAC 468-270-070.

Statutory Authority for Adoption: Chapter 47.46 RCW and RCW 47.56.165.

Adopted under notice filed as WSR 12-07-094 on March 21, 2012.

Changes Other than Editing from Proposed to Adopted Version: The pay by mail toll rates were reduced as follows:

	<b>Published Proposed Rates</b>	<b>Adopted Toll Rates</b>
<b>Vehicle Axles</b>	<b>Pay By Mail</b>	<b>Pay By Mail</b>
2	\$7.00	\$6.00
3	\$10.50	\$9.00
4	\$14.00	\$12.00
5	\$17.50	\$15.00
6 or more	\$21.00	\$18.00

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: May 21, 2012.

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 11-04-070, filed 1/28/11, effective 12/3/11)

**WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge?** The toll charges for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1  
Tacoma Narrows Bridge Toll Rates**

<b>((Vehicle Axles</b>	<b>Good To-Go!™ Pass</b>	<b>Cash</b>	<b>Pay By Mail</b>
<u>2</u>	\$2.75	\$4.00	\$5.50
<u>3</u>	\$4.15	\$6.00	\$8.25

<b>((Vehicle Axles</b>	<b>Good To-Go!™ Pass</b>	<b>Cash</b>	<b>Pay By Mail</b>
<u>4</u>	\$5.50	\$8.00	\$11.00
<u>5</u>	\$6.90	\$10.00	\$13.75
<u>6 or more</u>	\$8.25	\$12.00	\$16.50))

<b>Vehicle Axles</b>	<b>Good to Go!™ Pass</b>	<b>Cash</b>	<b>Pay By Mail</b>	<b>Pay by Plate<sup>1</sup></b>	<b>Customer-Initiated Payment<sup>2</sup></b>
<u>2</u>	\$4.00	\$5.00	\$6.00	\$4.25	\$5.50
<u>3</u>	\$6.00	\$7.50	\$9.00	\$6.25	\$8.50
<u>4</u>	\$8.00	\$10.00	\$12.00	\$8.25	\$11.50
<u>5</u>	\$10.00	\$12.50	\$15.00	\$10.25	\$14.50
<u>6</u>	\$12.00	\$15.00	\$18.00	\$12.25	\$17.50

Notes: <sup>1</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>2</sup>For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

**WSR 12-12-040  
PERMANENT RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed May 30, 2012, 1:22 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: The department of early learning (DEL) is permanently adopting changes to rules establishing procedures for background checks conducted by DEL. DEL conducts background checks to find and evaluate any history of arrests, convictions, negative actions, or other information that raises concern about an individual's character, suitability, or competence to care for or have unsupervised access to children in care. The proposed rules are intended to update the rules for several purposes, including to:

- Implement applicable provisions of SSHB [2SHB] 1903 that requires DEL to establish and maintain individual-based or portable background check registry.
- Add requirements for disclosure of conviction and non-conviction information and add a requirement for a noncriminal background check for individuals fourteen to sixteen years of age. The proposed rules also clarify disqualification requirements and reconsideration processes.
- Improve clarity of DEL background check requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 170-06-0030; and amending WAC 170-06-0010, 170-06-0020, 170-06-0040, 170-06-0050, 170-06-0060, 170-06-0070, 170-06-0080, 170-06-0090, 170-06-0100, 170-06-0110, and 170-06-0120.

Statutory Authority for Adoption: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832, chapter 43.215 and 43.43 RCW.

Other Authority: 2SHB 1903, 2011.

Adopted under notice filed as WSR 12-07-088 on March 21, 2012.

Changes Other than Editing from Proposed to Adopted Version: (1) WAC 170-06-0040(5) added "during the hours for which the licensee is licensed or certified to provide child care."

(2) WAC 170-06-0080(2) changed to read "If the department sends a notice of disqualification, the ((applicant)) subject individual will not be authorized to care for or have unsupervised access to children in child care, or to be present on the premises of a licensed or certified facility during the hours for which a licensee is licensed or certified to provide child care."

(3) WAC 170-06-0070 (7)(d) added "Subject to federal and state law."

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 5, Amended 11, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 11, Repealed 1.

Date Adopted: May 30, 2012.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0010 Purpose and scope.** (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL or department). ~~((The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are certified by DEL. Background checks are conducted to find and evaluate any history of criminal convictions, pending charges, negative actions, or other information that raises concerns about an individual's character, suitability and competence to care for or have unsupervised access to children in child care.~~

~~(2) This chapter applies to all individuals who are applying for a new or renewal license or certification, applying for authorization to care for or have unsupervised access to children in child care and to persons who are licensed, certified by DEL or authorized to care for or have unsupervised access to children in child care.~~

~~(3) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.~~

~~(4) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215, 43.43.830, and 43.43.832.~~

~~(5) Effective date: These rules are initially effective July 3, 2006, and apply prospectively.)~~ (2) The department conducts background checks on subject individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

(3) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

(4) The department's rules and state law require the evaluation of background information to determine the character, suitability, or competence of persons who will care for or have unsupervised access to children in child care.

(5) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(6) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832.

(7) Effective date: These rules are initially effective July 3, 2006, and apply prospectively. Effective July 1, 2012, these rules are amended to allow for increased and continued portability of background check clearances for subject individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0020 Definitions.** The following definitions apply to this chapter:

~~((+))~~ **"Agency"** has the same meaning as "agency" in RCW ~~((43.215.020))~~ 43.215.010(2).

~~((2))~~ **"Appellant"** means only those with the right of appeal under this chapter.

~~((3))~~ **"Applicant"** means an individual who is seeking a DEL background check authorization as part of an application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care.

(4) **"Authorized"** or **"authorization"** means approval by DEL to care for or have unsupervised access to children in child care or to work in or reside on the premises of a child care agency or certified facility.

~~((5))~~ **"Certification"** or **"certified by DEL"** means an agency that is legally exempt from licensing that has been certified by DEL as meeting minimum licensing requirements.

~~((6))~~ **"Conviction information"** means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

**"DEL"** or **"department"** means the department of early learning.

~~((7))~~ **"Director's list"** means a list of crimes, the commission of which disqualifies ~~((a))~~ a subject individual from being authorized by DEL to care for or have unsupervised access to children in child care, WAC 170-06-0120.

~~((8))~~ **"Disqualified"** means DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children in child care.

~~((9))~~ **"Negative action"** means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the ~~((applicant))~~ subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children in child care. This may include but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

~~((10))~~ **"Nonconviction information"** means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual.

**"Nonexpiring license"** or **"nonexpiring full license"** means a full license that is issued to a licensee following the

initial licensing period, as provided in WAC 170-151-087, 170-295-0095, or 170-296A-1450, as appropriate.

**"Subject individual":**

(1) Means an individual who:

(a) Is seeking a background check authorization or upon whom the department may conduct a background check authorization;

(b) Is sixteen years of age or older;

(c) Is employed by, contracted with, or volunteering for a licensed child care agency or certified facility; and

(d) Will care for or have unsupervised access to children in child care; and

(2) Includes, but is not limited to, the following:

(a) Personnel, including employees and staff;

(b) Contractors, including contracted providers;

(c) Temporary workers;

(d) Assistants;

(e) Volunteers;

(f) Interns;

(g) Each person residing on, or moving into, the premises of a licensed family home child care who is sixteen years of age or older;

(h) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care;

(i) All owners, operators, lessees, or directors of the agency or facility, or their designees;

(j) Applicants. As used in this definition, "applicant" means an individual who is seeking a DEL background check authorization as part of:

(i) An application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care; or

(ii) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DEL's authorization to care for or have unsupervised access to children in child care, with respect to an individual who is a currently licensed or certified child care provider; and

(k) Licensees. As used in this definition, "licensee" means the individual, person, organization, or legal entity named on the child care license issued by DEL and responsible for operating the child care facility or agency.

**"Unsupervised access"** means:

(a) ~~((A))~~ A subject individual will or may have the opportunity to be alone with a child in child care at any time for any length of time; and

(b) Access that is not within constant visual or auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.

**AMENDATORY SECTION** (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0040 Background clearance requirements.** ~~((1))~~ At the time of application for a license or certification or for authorization to care for or have unsupervised access to children in child care, the applicant shall submit to the department a completed background check form and fingerprint card, if required. A fingerprint card is required for a Federal Bureau of Investigation check if the applicant has

resided in the state of Washington for less than three years. This requirement applies to:

(a) Each individual applicant for a license or certification;

(b) All staff of the licensed child care agency or certified facility, whether they provide child care or not, including but not limited to:

(i) Primary staff persons;

(ii) Assistants;

(iii) Volunteers;

(iv) Interns;

(v) Contracted providers;

(vi) Each person residing on the premises of a licensed facility who is sixteen years of age or older; and

(vii) All individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care.

(2) Each person identified in this section must complete a DEL background check form, disclosing:

(a) Whether he or she has been convicted of any crime;

(b) All pending criminal charges; and

(c) Negative actions, to which he or she has been subject, as defined by WAC 170-06-0020(9).

(3) An agency, licensee, or certified facility shall require an applicant to submit to the licensee or facility a completed background check form:

(a) By the date of hire of new staff, assistants, volunteers, interns or contracted providers;

(b) By the date a person age sixteen or older moves onto the premises; or

(c) By the date a person who resides on the premises turns sixteen years old.

(4) The licensee or certified facility must submit the background check form to the department within seven days of the staff, assistant, volunteer, intern or contracted provider's first day of employment, date the person moves on the premises or turns sixteen years old, as applicable.

(5) An individual shall not have unsupervised access to children in child care unless he or she has obtained a DEL authorization under this chapter.

(6) Agencies, licensees and facilities shall not permit any individual to care for or have unsupervised access to children in child care, unless the individual has been authorized by DEL to care for or have unsupervised access to children in child care.

(7) An individual who has been disqualified by DEL shall not be present on the premises of a licensed or certified facility.)

(1) Effective July 1, 2012, all new subject individuals applying for a first-time background check must complete the background check application process through DEL to include:

(a) Completion of the required fingerprint process; and

(b) Payment of all required fees as provided in WAC 170-06-0044.

(2) All other subject individuals who have been qualified by the department to have unsupervised access to children in care, prior to July 1, 2012, must submit a new background check application no later than July 1, 2013. The subject person must:

(a) Submit the new background check application through DEL:

(b) Submit payment of all required fees as provided in WAC 170-06-0044:

(c) Complete the required fingerprint process if the subject individual has lived in Washington state for fewer than three consecutive years prior to July 1, 2013:

(d) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed.

(3) Each subject individual completing the DEL background check process must disclose:

(a) Whether he or she has been convicted of any crime:

(b) Whether he or she has any pending criminal charges: and

(c) Whether there is any negative actions, to which he or she has been subject, as defined by WAC 170-06-0020.

(4) A subject individual must not have unsupervised access to children in care unless he or she has obtained DEL authorization under this chapter.

(5) A subject individual who has been disqualified by DEL must not be present on the premises of a licensed or certified facility during the hours for which the licensee is licensed or certified to provide child care.

#### NEW SECTION

**WAC 170-06-0041 Licensee requirements.** (1) An agency, licensee, or certified facility must require a subject individual to complete the DEL background check application process:

(a) Within seven days of the date of hire;

(b) By the date a subject individual age sixteen or older moves onto the premises; or

(c) By the date a subject individual who lives on the premises turns sixteen years old.

(2) The licensee must keep on-site a copy of each subject individual's background check clearance authorization.

(3) The licensee must update the provider portal in the DEL system to verify the subject individuals associated with their program.

(4) The licensee must verify annually that each subject individual who is required to have a background check has either obtained a department clearance or has applied for a department background check through the DEL system. The verification must be submitted with the licensee's annual license fee and declarations.

#### NEW SECTION

**WAC 170-06-0042 Departmental investigation and redetermination.** (1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency.

(2) Subject to the requirements in RCW 43.215.215, the department may immediately suspend or modify the subject individual's background clearance.

(3) Subject to the requirements in RCW 43.215.300 and 43.215.305, and based on a determination that a subject indi-

vidual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

#### NEW SECTION

**WAC 170-06-0043 Failure to report nonconviction and conviction information.** (1) A licensee must report to the department within twenty-four hours if he or she has knowledge of the following with respect to a subject individual working in that child care agency or who resigns or is terminated with or without cause:

(a) Any nonconviction and conviction information for a crime listed in WAC 170-06-0120;

(b) Any other nonconviction and conviction information for a crime that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care; or

(c) Any negative action as defined in WAC 170-06-0020.

(2) A subject individual who has been issued a background check clearance authorization pursuant to WAC 170-06-0040 must report nonconviction and conviction information to the department involving a disqualifying crime under WAC 170-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information.

(3) A subject individual who intentionally or knowingly fails to report to the department as provided in subsection (1) or (2) of this section may have his or her background check clearance suspended. This penalty will be in addition to any other penalty that may be imposed as a result of a violation of this chapter or chapter 170-151, 170-295, or 170-296A WAC.

#### NEW SECTION

**WAC 170-06-0044 Background check fees.** (1) Subject individuals must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the WSP, FBI, and the DEL fingerprint contractor;

(b) The DEL administrative fee of:

(i) The cost of administration of the portable background check clearance based upon electronic submission has been determined to be twelve dollars for any background check application received in the period after June 30, 2012, therefore the fee for an electronic submission is twelve dollars for the described period;

(ii) The cost of administration of the portable background check clearance based upon a manual paper submission has been determined to be twenty-four dollars for any background check received after June 30, 2012, therefore the fee for a manual paper-based submission is twenty-four dollars for the described period.

(2) Fee payments may be:

(a) In the form of a personal check, cashier's check, or money order, which shall be sent by mail; or

(b) By electronic funds transfer (when available). As used in this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) The department will not issue a background check clearance authorization to a subject individual:

(a) Who fails to pay the required fees in subsection (1) of this section; or

(b) Whose check, money order, or electronic funds transfer is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

An additional processing fee of twenty-five dollars will be charged by the department for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

#### NEW SECTION

**WAC 170-06-0045 Noncriminal background checks for individuals under sixteen years of age.** (1) When applicable within Title 170 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DEL noncriminal background check application process for subject individuals:

(a) Fourteen to sixteen years of age, within seven days after the subject individual starts to work in the licensed or certified child care.

(b) Thirteen to sixteen years of age residing in a licensed or certified family home child care.

(c) Thirteen to sixteen years of age, within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1)(a), (b) or (c) of this section must not have unsupervised access to children in child care.

(3) The licensee must verify annually that each subject individual who is required to have a noncriminal background check has either obtained a department clearance or has applied for a department noncriminal background check. The verification must be submitted with the licensee's annual license fee and declarations.

(4) When conducting a noncriminal background check, the department:

(a) Requires the minor's parent or guardian to sign the noncriminal background check application;

(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 170-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and

(c) Does not immediately disqualify an individual for a conviction under WAC 170-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0050 Department action following completion of background inquiry.** (~~After~~) As part of the

background check process the department (~~receives the background information it~~) will conduct a character, suitability (~~and~~) or competence assessment as follows:

(1) Compare the background information with the DEL director's list, WAC 170-06-0120, to determine whether the (~~applicant~~) subject individual must be disqualified under WAC 170-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and (~~shall~~) may include convictions or dispositions for crimes committed as either an adult or a juvenile. It (~~shall~~) may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the defendant's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) The crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(2) Evaluate any negative action information to determine whether the (~~applicant~~) subject individual has any negative actions requiring disqualification under WAC 170-06-0070(3).

(3) (~~If the applicant is not disqualified under WAC 170-06-0070 (1), (2) or (3),~~) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 170-06-0070 (4), (5) or (7).

(4) (~~Notify the child care agency, licensee, or certified facility whether or not the department is able to authorize the applicant to care for or have unsupervised access to children in child care.~~

(~~5~~) The department (~~will~~) may discuss the result of the criminal history and background check information with the licensee (~~or management staff of a licensed or certified facility, when applicable~~) upon request, except for protected contents of the FBI record of arrest and prosecution (RAP) sheet subject to federal regulation.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0060 Additional information the department may consider.** (1) If DEL has reason to believe that additional information is needed to determine the character, suitability ~~((and))~~ or competence of the ~~((applicant))~~ subject individual to care for or have unsupervised access to children in child care, additional information will be requested. Upon request, the ~~((applicant))~~ subject individual must provide to the department any additional reports or information requested. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

(2) Any evaluation requested under this section must be conducted by an evaluator who is licensed or certified under RCW 18.130.040. The evaluation will be at the expense of the person being evaluated.

(3) The ~~((applicant))~~ subject individual must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to evaluation, to establish the need for and scope of the evaluation, and after the evaluation to discuss the results.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0070 Disqualification ~~((and reconsideration))~~. Background information that will disqualify ~~((an applicant))~~ a subject individual.**

(1) ~~((An applicant))~~ A subject individual who has a background containing any of the permanent convictions on the director's list, WAC 170-06-0120(1), ~~((shall))~~ will be permanently disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care.

(2) ~~((An applicant))~~ A subject individual who has a background containing any of the nonpermanent convictions on the director's list, WAC 170-06-0120(2), ~~((shall))~~ will be disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care for five years after the conviction date.

(3) ~~((An applicant shall))~~ A subject individual will be disqualified when their background contains a negative action, as defined in WAC 170-06-0020~~((9))~~ that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

**Background information that may disqualify ~~((an applicant))~~ a subject individual.**

(4) ~~((An applicant))~~ A subject individual may be disqualified for other negative action(s), as defined in WAC 170-06-0020~~((9))~~ which reasonably relate to ~~((the applicant's))~~ his or her character, suitability ~~((and))~~, or competence to care for or have unsupervised access to children in child care.

(5) ~~((An applicant))~~ A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(6) ~~((An applicant))~~ A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(7) The department may also disqualify ~~((an applicant))~~ a subject individual if ~~((the applicant))~~ that person has other nonconviction background information that renders ~~((the applicant))~~ him or her unsuitable to care for or have unsupervised access to children in child care. Among the factors the department may consider are:

(a) The ~~((applicant))~~ subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The ~~((applicant))~~ subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child in child care.

(c) The ~~((applicant))~~ subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, ~~((an applicant))~~ a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.

(d) Subject to federal and state law, the ~~((applicant))~~ subject individual lacks sufficient physical or mental health to meet the needs of children in child care.

(e) The ~~((applicant))~~ subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

~~((Reconsideration of disqualification.~~

~~((8) If an applicant who has been disqualified can demonstrate by clear and convincing evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in child care, the department may consider authorizing the applicant to care for or have unsupervised access to children in child care.))~~

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0080 Notification of disqualification.**

(1) The department will notify the ~~((applicant))~~ subject individual in writing if ~~((the applicant))~~ he or she is disqualified by the background check.

(2) If the department sends a notice of disqualification, the ~~((applicant))~~ subject individual will not be authorized to care for or have unsupervised access to children in child care, or to be present on the premises of a licensed or certified facility during the hours for which a licensee is licensed or certified to provide child care.

(3) Any decision by the department ~~((disqualifying an applicant))~~ to disqualify a subject individual under this chapter is effective immediately upon receipt of notice ~~((by))~~ from the department to the ~~((applicant))~~ subject individual.



AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0090 Administrative hearing to contest disqualification.** (1) ~~((An applicant))~~ A subject individual may request an administrative hearing to contest the department's disqualification decision under WAC 170-06-0070.

(2) The ~~((employer))~~ licensee or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0100 Request for administrative hearing.** (1) Any ~~((person who))~~ subject individual has a right to contest the department's disqualification decision under ~~((this chapter))~~ WAC 170-06-0070 and must request a hearing within twenty-eight days of receipt of the disqualification decision, regardless of whether the subject individual requests that the licensing supervisor review the disqualification.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department ~~((disqualifying))~~ to disqualify a ((person)) subject individual under this chapter ~~((shall))~~ will remain in effect pending the outcome of the administrative hearing or review under chapter 170-03 WAC, notwithstanding any provision of chapter 170-03 WAC to the contrary.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0110 Limitations on challenges to disqualifications.** (1) If the disqualification is based on a criminal conviction, the ~~((appellant))~~ subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the ~~((appellant))~~ subject individual cannot contest the finding if:

(a) The ~~((appellant))~~ subject individual was notified of the finding by the department of social and health services (DSHS) and failed to request a hearing to contest the finding; or

(b) The ~~((appellant))~~ subject individual was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the ~~((applicant's))~~ subject individual's child to be dependent as defined in chapter 13.34 RCW, the ~~((applicant))~~ subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based ~~((upon))~~ on a negative action as defined in WAC 170-06-0020~~((4))~~ the ~~((appellant))~~ subject individual cannot contest the underlying negative action in the administrative hearing if the ~~((appellant))~~ subject individual was previously ~~((afforded))~~ given the right of review or hearing right and a final decision or finding has been issued.

#### NEW SECTION

**WAC 170-06-0115 Reconsideration of disqualification.** (1) Subject to the requirements contained in chapter 170-06 WAC the department may reconsider an earlier decision to disqualify a subject individual.

(2) The disqualified subject individual must submit with his or her request for reconsideration a current and complete background check form and fingerprint card pursuant to WAC 170-06-0040.

(3) For a disqualification based on WAC 170-06-0070 (4), 170-06-0070 (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children in child care. For purposes of (3) of this subsection a disqualification based on a "negative action," WAC 170-06-0070(4), 170-06-0070 (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or

(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.

(4) For a disqualification based on any of the circumstances described in WAC 170-06-0070(3), 170-06-0070 (7)(b) or (d) a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.

(5) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(1).

(6) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(2) for a period of five years from the date of the disqualifying conviction.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0120 Director's list.** (1) ~~((An applicant's))~~ A subject individual's conviction for any crimes listed in column (a) in the table below ~~((shall))~~ will permanently

disqualify (~~(the applicant)~~) him or her from authorization to care for or have unsupervised access to children in child care.

(2) (~~(An applicant's)~~) A subject individual's conviction for any crime listed in column (b) in the table below (~~(shall)~~) will disqualify (~~(the applicant)~~) him or her from authorization to care for or have unsupervised access to children in child care for a period of five years from the date of conviction.

<b>(a) Crimes that permanently disqualify (<del>(an applicant)</del>) a subject individual</b>	<b>(b) Crimes that disqualify (<del>(an applicant)</del>) a subject individual for five years from date of conviction</b>
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
Carnal knowledge	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment

<b>(a) Crimes that permanently disqualify (<del>(an applicant)</del>) a subject individual</b>	<b>(b) Crimes that disqualify (<del>(an applicant)</del>) a subject individual for five years from date of conviction</b>
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-06-0030 Reason for background checks.

**WSR 12-12-041**  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed May 30, 2012, 1:34 p.m., effective June 30, 2012]

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

Purpose: To update the board's practices and procedures for administrative hearings so they are consistent with the Administrative Procedure Act model rules of procedure (chapter 10-98 WAC), and chapter 363-116 WAC, and the civil rules of Washington. The proposed changes are also intended to modify the scope of hearings and associated discovery as well as cover any necessary housekeeping matters.

Citation of Existing Rules Affected by this Order: Repealing chapter 363-11 WAC (twenty-two sections); and amending chapter 363-11 WAC (twenty-two sections).

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 11-23-184 on November 23, 2011.

Changes Other than Editing from Proposed to Adopted Version: Modifications were made to WAC 363-11-420(3) dealing with the "scope of discovery, relevant documents for hearings and record of proceedings" relating to the performance of pilots.

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 22, Repealed 22.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 22, Repealed 22.

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 22, Repealed 22.

Date Adopted: March 27, 2012.

Peggy Larson  
Executive Director

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-001 General rule and information.** The chairperson of the board of pilotage commissioners is the assistant secretary of marine operations of the department of

transportation of the state of Washington or the assistant secretary's designee. Information regarding the Pilotage Act, complaints and other matters coming under the provisions of the Pilotage Act and the board's rules and regulations may be obtained by contacting the chairperson or the board's (~~secretary~~) staff in person or in writing at the Office of the Board of Pilotage Commissioners(~~(, Pier 52, Seattle, Washington 98104)~~). All public documents in the custody of the board may be obtained upon request made to the chairperson of the Board of Pilotage Commissioners(~~(, Pier 52, Seattle, Washington 98104)~~).

Any matter filed with the chairperson and/or the (~~secretary~~) staff will be brought to the attention of the board at its next regular meeting, the date of which is the second Thursday of each month. Persons desiring to do so may also attend the board meetings(~~(, which are held at Pier 52, Seattle, Washington)~~). Please see [www.pilotage.wa.gov](http://www.pilotage.wa.gov) for office hours, meeting times and locations.

The purpose and scope of activity of the board of pilotage commissioners are set out in chapter 88.16 RCW and are as follows:

- Scope: (1) Puget Sound pilotage district.  
(2) Grays Harbor pilotage district.

Purpose: The purpose of the board of pilotage commissioners is to prevent the loss of human lives, loss of property and vessels and to protect the marine environment by maintenance of a competent and efficient pilotage service on the state's waters. To accomplish this end the board examines proficiency of potential pilots, licenses pilots, regulates pilots, enforces the use of pilots, sets pilotage rates, receives and investigates reports of accidents involving pilots, keeps records of various matters affecting pilotage and fulfills other responsibilities enumerated in chapter 88.16 RCW.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-090 ((Service of process — By whom served.)) Adoption of the model rules of procedure.** ~~((The board of pilotage commissioners shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.))~~ Except as they may be inconsistent with the rules of this chapter, the board adopts the model rules of procedure as set forth in chapter 10-08 WAC, et seq. Where the rules of this chapter conflict with chapter 10-08 WAC, the rules of this chapter shall govern.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-230 Depositions and interrogatories ((in contested cases)) — Right to take.** Except as may be otherwise provided in this chapter, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint. The attendance of witnesses may be compelled by the use of a subpoena. Deposi-

tions shall be taken only in accordance with this rule and the rule of subpoenas.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-240 Depositions and interrogatories (~~in contested cases~~)—Scope.** Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. Depositions shall not exceed four hours, including breaks, unless otherwise agreed to by the parties, or unless otherwise ordered by the presiding officer based upon a motion by the party seeking the deposition demonstrating good cause why the deposition should exceed four hours.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-250 Depositions and interrogatories (~~in contested cases~~)—Officer before whom taken.** Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the board of pilotage commissioners or agreed upon by the parties by stipulation in writing filed with the board. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-260 Depositions and interrogatories (~~in contested cases~~)—Authorization.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than ~~((three))~~ fifteen days in writing to the board of pilotage commissioners and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. ~~((On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time.))~~ If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-270 Depositions and interrogatories (~~in contested cases~~)—Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or

by the person to be examined and upon notice and for good cause shown the board of pilotage commissioners or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the board, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board, or the board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the ~~((agency))~~ board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-280 Depositions and interrogatories (~~in contested cases—Oral examination and cross examination~~).** ~~((Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross-interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.))~~ (1) Written interrogatories. Written interrogatories may be submitted in accordance with the rules of this chapter, which may become a part of the record of proceedings upon a motion made by one of the parties. Parties shall have sixty days to respond to interrogatories.

(2) Depositions and interrogatories in hearings brought pursuant to WAC 363-116-083 and 363-116-084. The board and the exam committee shall be required to produce for depositions no more than a total of three fact witnesses (two board/committee members, one test developer), and no more than one expert witness, in connection with any hearing requested pursuant to WAC 363-116-083 and 363-116-084, unless the board's chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "excep-

tional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses.

No more than five written interrogatories (including subparts) in total may be submitted to other board and/or exam committee members, which may then be submitted as a part of the record of proceedings upon a motion duly made.

The scope of the deposition and interrogatories shall be limited to those issues set forth in WAC 363-116-083(5) and 363-116-084(5) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, performance evaluations, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

(3) Depositions and interrogatories in hearings brought pursuant to WAC 363-116-086.

(a) Board/TEC witnesses - The board and the trainee evaluation committee (TEC) shall be required to produce no more than a total of two fact witnesses (one board witness, one TEC witness) and no more than one expert witness in support of its decisions made pursuant to WAC 363-116-080, unless the chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses.

No more than five written interrogatories (including subparts) in total may be submitted to other board and/or TEC members, which may then be submitted as a part of the record of proceedings upon a motion duly made. The scope of the deposition and interrogatories will be limited as set forth in WAC 363-116-086 (3)(b) and (c) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, correspondence to the petitioner, training trip reports, training trip report summary spreadsheets, and/or other documents submitted to the board as a part of the decision making process.

(b) Training and supervising pilots - The board has determined that requiring or permitting the deposition of training and supervising pilots in connection with a hearing pursuant to WAC 363-116-086 would jeopardize the integrity of the training program and would stifle candid and honest assessments of a trainee's performance in the training program. The training and supervising pilots prepare written training trip reports for each training trip. Those reports shall speak for themselves. Notwithstanding any other provision in these regulations, no training or supervising pilot shall be deposed, or called as a witness, in connection with a hearing brought pursuant to WAC 363-116-086. Consistent with WAC 363-11-410, to the extent a particular training trip report is consid-

ered by a party to be vague and/or ambiguous, a party may seek, by way of motion, a declaration from a training or supervising pilot, seeking clarification of specific issues which the party believes, for good cause shown, should be clarified. Such declaration may then become a part of the record of proceedings.

(4) Depositions and interrogatories in hearings brought pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420. The board shall be required to produce for depositions no more than a total of two fact witnesses and, if it deems necessary one expert witness, in connection with any hearing requested pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420, unless the board's chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must show just cause to the presiding officer as to why additional witnesses should be subject to deposition and/or interrogatories and that such information cannot be obtained through other means.

Unless the presiding officer rules otherwise based on a showing of just cause, no more than five written interrogatories (including subparts) in total may be submitted to other board members concerning the matters at issue, which may then be submitted as a part of the record of proceedings upon a motion duly made.

The scope of the deposition and interrogatories will be limited as set forth in RCW 88.16.100(5), WAC 363-116-370 and 363-116-420 and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and an adequate written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-290 Depositions and interrogatories ((in contested cases))—Recordation.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony ((~~by typewriter directly or~~)) by transcription from stenographic notes((~~, wire or record recorders, which record shall separately and consecutively number each interrogatory~~)). Depositions shall not be recorded via videotape, or other video recording device under any circumstances. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-310 Depositions and interrogatories ((in contested cases))—Use and effect.** Subject to rulings by the hearing officer upon objections a deposition taken and

filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon ~~((his own motion or))~~ the motion of any party. Except by agreement of the parties or ruling of the hearing officer, ~~((a deposition will be received only in its entirety))~~ only that portion of the deposition transcript cited during the adjudicative hearing which demonstrates that the witness made a previously inconsistent statement may become a part of the record of proceedings. The portion of the transcript submitted shall include such testimony necessary to give proper context to the witness's prior statement, as determined by the hearing officer. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-330 Depositions upon interrogatories—Submission of interrogatories.** Where ~~((the deposition is taken upon))~~ written interrogatories are submitted as permitted under this chapter, the party offering the testimony shall separately and consecutively number each interrogatory ~~((and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories))~~. The number of interrogatories shall not exceed five, including subparts. Answers shall be provided within sixty days of receipt, unless otherwise ordered by the presiding officer, and may be submitted as a part of the record of proceedings upon a motion duly made by either party.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-350 Depositions upon interrogatories—Attestation and return.** The ~~((officer before whom))~~ answers to interrogatories ~~((are verified or answered))~~ shall ~~((H))~~ certify under ~~((his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the board of pilotage commissioners, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent))~~ penalty of perjury, of the laws of the state of Washington that the answers are true and correct as of the date of attestation.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-410 ~~((Form and content of decisions in contested cases.))~~ Adjudicative hearings—Testimony.** ~~((Every decision and order, whether proposed, initial, or final, shall:~~

- ~~(1) Be correctly captioned as to name of agency and name of proceeding;~~
- ~~(2) Designate all parties and counsel to the proceeding;~~
- ~~(3) Include a concise statement of the nature and background of the proceeding;~~
- ~~(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;~~
- ~~(5) Whenever practical, include the reason or reasons for the particular order or remedy afforded;~~
- ~~(6) Wherever practical, be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.))~~ (1) Testimony in hearings brought pursuant to WAC 363-116-083 and 363-116-084. The board and the exam committee shall be required to produce no more than a total of three fact witnesses (two board/committee members, one test developer), and no more than one expert witness, for any hearing requested pursuant to WAC 363-116-083 and 363-116-084, unless the board's chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses.

The scope of the hearing shall be limited to those issues set forth in WAC 363-116-083(5) and 363-116-084(5) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, performance evaluations, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

(2) Testimony in hearings brought pursuant to WAC 363-116-086.

(a) Board/TEC witnesses - The board and the trainee evaluation committee (TEC) shall be required to produce no more than a total of two fact witnesses (one board witness, one TEC witness) and no more than one expert witness in support of its decisions made pursuant to WAC 363-116-080, unless the chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses. The scope of the testimony for the hearing will be limited as set forth in WAC 363-116-086 (3)(b) and (c) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the

form of a written recommendation, board or committee meeting minutes, training trip reports, training trip report summary spreadsheets, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

(b) Training and supervising pilots - The board has determined that requiring or permitting the testimony of training and supervising pilots in connection with a hearing pursuant to WAC 363-116-086 would jeopardize the integrity of the training program and would stifle candid and honest assessments of a trainee's performance in the training program. The training and supervising pilots prepare written training trip reports for each training trip. Those reports shall speak for themselves. Notwithstanding any other provision in these regulations, no training or supervising pilot shall be called as a witness in connection with a hearing brought pursuant to WAC 363-116-086. To the extent a particular training trip report is considered by a party to be vague and/or ambiguous, a party may seek, by way of motion, a declaration from a training or supervising pilot, seeking clarification of specific issues which the party believes, for good cause shown, should be clarified. The burden to demonstrate that there is a necessity for such a declaration shall be on the petitioner, who must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means. Such declaration may then become a part of the record of proceedings, upon a motion duly made by a party to the proceedings.

(3) Testimony in hearings brought pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420. The board shall be required to produce no more than a total of two fact witnesses and, if it deems necessary one expert witness, in connection with any hearing requested pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420, unless the board's chair, in his/her sole discretion determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must show just cause to the presiding officer as to why additional witnesses should testify and that such information cannot be obtained through other means.

The scope of the testimony for the hearing will be limited to those issues set forth in RCW 88.16.100(5), WAC 363-116-370 and 363-116-420 and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and an adequate written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, incident reports, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-420 (~~Definition of issues before hearing~~) Scope of discovery, relevant documents for hearings and record of proceedings.** (1) Hearings brought pursuant to WAC 363-116-083 and 363-116-084. The scope of discovery and relevant admissible documents, shall be limited to

those materials bearing on the issues set forth in WAC 363-116-083(5) and 363-116-084(5), and as may otherwise be limited by chapter 363-11 WAC herein. Documentation and materials relating to the performance of pilot applicants other than those requesting a hearing are not relevant, they shall not be subject to discovery, they shall not be submitted as an exhibit or referenced in any hearing, nor shall they be submitted for inclusion in any record of proceeding conducted pursuant to WAC 363-116-083 and 363-116-084.

(2) Hearings brought pursuant to WAC 363-116-086. The scope of discovery and relevant admissible documents shall be limited to those materials bearing on the issues set forth in WAC 363-116-086, and as may otherwise be limited by chapter 363-11 WAC herein. Documentation and materials relating to the performance of pilot trainees other than those requesting a hearing are not relevant, they shall not be subject to discovery, they shall not be submitted as an exhibit or referenced in any hearing, nor shall they be submitted for inclusion in any hearing or record of proceeding conducted pursuant to WAC 363-116-086.

(3) Hearings brought pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420. The scope of discovery and relevant admissible documents shall be limited to those materials bearing on the issues set forth in RCW 88.16.110(5), WAC 363-116-370 and 363-116-420.

In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-470 Expert or opinion testimony (~~and testimony based on economic or statistical data~~)—Number and qualifications of witnesses.** That the hearing examiner or other appropriate officer in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-480 Expert or opinion testimony (~~and testimony based on economic or statistical data~~)—Written sworn statements.** That the hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, require, and when not so permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony (~~based on economic or statistical data~~) be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other par-

ties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing, which shall be no less than sixty days prior to the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses. If cross examination is requested, the sworn written statement may be supplemented with live direct testimony consistent with the sworn written statement.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-490 Expert or opinion testimony (~~and testimony based on economic or statistical data~~)—Supporting data.** That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC (~~(296-11-480)~~) 363-11-480, at least sixty day prior to the hearing, but, wherever practicable that he restrict to a minimum the placing of such data in the record.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-500 Expert or opinion testimony and testimony based on economic or statistical data—Effect of noncompliance with WAC 363-11-470 or 363-11-480.** Whenever the manner of introduction of opinion or expert testimony (~~(or testimony based on economic or statistical data)~~) is governed by requirements fixed under the provisions of WAC (~~(296-11-470 or 296-11-480)~~) 363-11-470 or 363-11-480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-520 Rules of evidence—Admissibility criteria.** Subject to the other provisions (~~(of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington)~~) and rules on evidence set forth in this chapter, evidentiary rulings shall conform with RCW 34.05.452 and WAC 10-08-140.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. A party may move to exclude evidence previously admitted pursuant to WAC 10-08-140(6); a party may also move to exclude previously admitted evidence if a subsequent ruling by the presiding officer renders previously admitted evidence irrelevant, cumulative, immaterial and/or inadmissible and the moving party can demonstrate that the granting of such motion will not unjustly prejudice the rights of the other party. Such a motion shall be permissible and considered timely if made prior to the close of the hearing.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-580 Declaratory rulings.** As prescribed by chapter 34.05 RCW (~~(34-04-080)~~) et seq., any interested person may petition the board of pilotage commissioners for a declaratory ruling. The board shall consider the petition and within a reasonable time the board shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued or
- (3) Set a reasonable time and place for a hearing or the submission of written evidence upon the matter, and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved.
- (4) If a hearing is held or evidence is submitted as provided in subsection (3), the board shall within a reasonable time:
  - (a) Issue a binding declaratory rule; or
  - (b) Issue a nonbinding declaratory ruling; or
  - (c) Notify the person that no declaratory ruling is to be issued.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

**WAC 363-11-590 Forms.** (1) Any interested person petitioning the board of pilotage commissioners for a declaratory ruling pursuant to RCW (~~(34-04-080)~~) 34.05.240, shall generally adhere to the following form for such purpose.

(a) At the top of the page shall appear the wording "Before the board of pilotage commissioners, state of Washington," on the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and



address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x ~~(13)~~ 14" in size.

(2) Any interested person petitioning the board of pilotage commissioners requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

(a) At the top of the page shall appear the wording "Before the board of pilotage commissioners, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x ~~(13)~~ 14" in size.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 363-11-003 Index to documents.
- WAC 363-11-070 Computation of time.
- WAC 363-11-080 Notice and opportunity for hearing in contested cases.
- WAC 363-11-100 Service of process—Upon whom served.

- WAC 363-11-110 Service of process—Service upon parties.
- WAC 363-11-120 Service of process—Method of service.
- WAC 363-11-130 Service of process—When service complete.
- WAC 363-11-140 Service of process—Filing with agency.
- WAC 363-11-150 Subpoenas—Where provided by law—Form.
- WAC 363-11-160 Subpoenas—Issuance to parties.
- WAC 363-11-170 Subpoenas—Service.
- WAC 363-11-180 Subpoenas—Fees.
- WAC 363-11-190 Subpoenas—Proof of service.
- WAC 363-11-200 Subpoenas—Quashing.
- WAC 363-11-210 Subpoenas—Enforcement.
- WAC 363-11-220 Subpoenas—Geographical scope.
- WAC 363-11-300 Depositions and interrogatories in contested cases—Signing attestation and return.
- WAC 363-11-340 Depositions upon interrogatories—Interrogation.
- WAC 363-11-360 Depositions upon interrogatories—Provisions of deposition rule.
- WAC 363-11-430 Prehearing conference rule—Authorized.
- WAC 363-11-440 Prehearing conference rule—Record of conference action.
- WAC 363-11-450 Submission of documentary evidence in advance.

**WSR 12-12-047**

**PERMANENT RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed June 1, 2012, 8:07 a.m., effective July 2, 2012]

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

Purpose: The purpose of this proposal is to amend the rule, as necessary, to ensure the rule is accurate, up-to-date, and written in "plain English." The amended rule ensures accuracy and clearly identifies what retirement information is being provided to retirement system members and why [by] whom.

Citation of Existing Rules Affected by this Order:  
Amending WAC 415-02-130.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.50.065.

Adopted under notice filed as WSR 12-08-056 on April 3, 2012.

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

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

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

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

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

Date Adopted: June 1, 2012.

Steve Hill  
Director

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

**WAC 415-02-130 Will I receive retirement ((and)) account information?** (1) DRS ((provides)) will make annual statements available to all members who ((are currently employed and are being reported, and to inactive members who provide a mailing address)) have a balance of service credit or dollars in accordance with RCW 41.50.065.

(2) If you are a member of Plan 1 or 2, ((you will receive annual statements. The statements)) the information will include, but ((are)) is not limited to, the following ((information)):

- (a) Service credit;
- (b) Contributions; and
- (c) Regular interest((-and
- (d) Various retirement information)).

(3) ((For)) If you are a member of Plan 3, ((you will receive two types of statements)) the information will be provided through two sources.

(a) ((The defined benefit portion of your plan will provide an annual statement of your accumulated service credit and various retirement information)) Service credit information, used in the calculation of the defined benefit component, will be made available annually by DRS.

(b) ((The defined contribution portion of your plan will provide annual and)) Information regarding the defined contribution component of your plan will be provided on quarterly statements from the recordkeeper. The statements include, but are not limited to, contributions and account activity.

(4) Information on annual and quarterly statements are based on information provided to the department by your employer and are subject to correction.

**WSR 12-12-059**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 5, 2012, 9:27 a.m., effective July 6, 2012]

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

Purpose: The purpose of this rule making is to amend WAC sections to align with the Washington state health technology clinical committee (HTCC) decisions on spinal injections, nerve stimulators, discography and structured intensive multidisciplinary programs (SIMPs).

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-030, 296-20-03001, and 296-20-03002.

Statutory Authority for Adoption: RCW 70.14.110, 51.04.020, 51.04.030.

Adopted under notice filed as WSR 12-07-066 on March 20, 2012.

Changes Other than Editing from Proposed to Adopted Version: Wording was clarified in WAC 296-20-03002(7) to clarify that only therapeutic medial branch blocks, intradiscal injections, and facet injections directed into the spine are no longer authorized. These changes do not impact coverage for injections in nonspinal locations.

A final cost-benefit analysis is available by contacting Marie Manteuffel, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-5026, fax (360) 902-6315, e-mail Marie.Manteuffel@LNI.WA.GOV.

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

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

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

Date Adopted: June 5, 2012.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-030 Treatment not requiring authorization for accepted conditions.** (1) A maximum of twenty office calls for the treatment of the industrial condition, during the first sixty days, following injury. Subsequent office calls must be authorized. Reports of treatment rendered must be filed at sixty day intervals to include number of office visits to date. See chapter 296-20 WAC and department policies for report requirements and further information.

(2) Initial diagnostic X rays necessary for evaluation and treatment of the industrial injury or condition. See WAC 296-20-121 for further information.

(3) The first twelve physical therapy treatments as provided by chapters 296-21, 296-23, and 296-23A WAC, upon consultation by the attending doctor or under his direct supervision. Additional physical therapy treatment must be authorized and the request substantiated by evidence of improvement. In no case will the department or self-insurer pay for inpatient hospitalization of a claimant to receive physical therapy treatment only. USE OF DIAPULSE, THERMATIC (standard model only), SPECTROWAVE AND SUPERPULSE MACHINES AND IONTOPHORESIS IS NOT AUTHORIZED FOR WORKERS ENTITLED TO BENEFITS UNDER THE INDUSTRIAL INSURANCE ACT.

(4) Routine laboratory studies reasonably necessary for diagnosis and/or treatment of the industrial condition. Other special laboratory studies require authorization.

(5) Routine standard treatment measures rendered on an emergency basis or in connection with minor injuries not otherwise requiring authorization.

(6) Consultation with specialist when indicated. See WAC 296-20-051 for consultation guidelines.

~~(7) ((Diagnostic or therapeutic nerve blocks. See WAC 296-20-03001 for restrictions.~~

~~(8) Intra-articular injections. See WAC 296-20-03001 for restrictions.~~

~~(9)) Myelogram if prior to emergency surgery.~~

**AMENDATORY SECTION** (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

**WAC 296-20-03001 Treatment requiring authorization.** Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; ICD-9-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first twenty visits or sixty days whichever occurs first.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X ray and radium therapy.

(4) Diagnostic studies other than routine X-ray and blood or urinalysis laboratory studies.

(5) Myelogram ~~((and discogram))~~ in nonemergent cases.

(6) Physical therapy treatment beyond initial twelve treatments as outlined in chapters 296-21, 296-23, and 296-23A WAC.

~~(7) Diagnostic or therapeutic injections((Epidural or caudal injection of substances other than anesthetic or contrast solution will be authorized under the following conditions only:~~

~~(a) When the worker has experienced acute low back pain or acute exacerbation of chronic low back pain of no more than six months duration.~~

~~(b) The worker will receive no more than three injections in an initial thirty-day treatment period, followed by a thirty-day evaluation period. If significant pain relief is demonstrated one additional series of three injections will be authorized. No more than six injections will be authorized per acute episode.)) that include, but are not limited to:~~

~~(a) Therapeutic subarachnoid, epidural, or caudal injections for chronic pain;~~

~~(b) Diagnostic facet injections;~~

~~(c) Sacroiliac joint injections for chronic pain;~~

~~(d) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.~~

~~Refer to fee schedule payment policies and coverage decisions for authorization criteria.~~

(8) Home nursing, attendant services or convalescent center care must be authorized per provisions outlined in WAC 296-20-091 or 296-23-246.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; ~~((TNS units;))~~ masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) Biofeedback program; structured intensive multi-disciplinary pain programs (SIMPs); pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. Refer to the department's medical aid rules and fee schedules for details.

(11) Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending doctor can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.

~~(12) ((Injections of anesthetic and/or anti-inflammatory agents into the vertebral facet joints will be authorized to qualified specialists in orthopedies, neurology, and anesthesia, or other physicians who can demonstrate expertise in the procedure, AND who can provide certification their hospital privileges include the procedure requested under the following conditions:~~

~~(a) Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the department or self-insurer.~~

~~(b) Procedure must be performed in an accredited hospital under radiographic control.~~

~~(c) Not more than four facet injection procedures will be authorized in any one patient.~~

~~(13))~~ The long term prescription of medication under the specific conditions and circumstances in (a) and (b) of this subsection are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.

(a) Nonsteroidal anti-inflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.

(b) Anticonvulsive agents for the treatment of seizure disorders caused by trauma.

~~((14) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.~~

~~(15))~~ (13) The department may designate those diagnostic and surgical procedures which can be performed in other than a hospital inpatient setting. Where a worker has a medical condition which necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.

AMENDATORY SECTION (Amending WSR 09-20-040, filed 9/30/09, effective 11/1/09)

**WAC 296-20-03002 Treatment not authorized.** The department or self-insurer will not allow nor pay for following treatment:

(1) Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.

(2) Iontophoresis; prolotherapy; acupuncture; injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-theal injections).

(3) Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

(4) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

(5) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

(6) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a description of the treatment, reason for the request with benefits and results expected.

(7) Therapeutic medial branch block injections, therapeutic intradiscal injections, and therapeutic facet injections of the spine.

(8) Transcutaneous, interferential, and percutaneous nerve stimulators used in the home setting, and all associated supplies and equipment.

**WSR 12-12-060  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed June 5, 2012, 9:28 a.m., effective August 1, 2012]

Effective Date of Rule: August 1, 2012.

Purpose: On May 2, 2011, the Occupational Safety and Health Administration (OSHA) published a final rule on working conditions in shipyards. The rule updated existing requirements to reflect advances in industry practices and technology and provided new protections from hazards that were not previously addressed, including the control of hazardous energy. The department made identical amendments to our rules governing shipyards in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 296-304-01001 Definitions, 296-304-060 General working conditions—Scope and application, 296-304-06001 Housekeeping, 296-304-06003 Illumination, 296-304-06005 Utilities, 296-304-06007 Work in confined or isolated spaces, 296-304-06009 Work on or in the vicinity of radar and radio, 296-304-06011 Work in or on lifeboats, 296-304-06013 Health and sanitation, 296-304-06015 First aid, 296-304-10001 Ship's boilers, 296-304-10003 Ship's piping systems, 296-304-10005 Ship's propulsion machinery and 296-304-120 Electrical machinery—Electrical circuits and distribution boards; and new sections WAC 296-304-06002 Sanitation, 296-304-06016 Control of hazardous energy (lockout/tags-plus), 296-304-06017 Retention of DOT markings, placards, and labels, and 296-304-06018 Motor vehicle safety equipment, operation, and maintenance.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 12-07-071 on March 20, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 14, 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 4, Amended 14, 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 4, Amended 14, Repealed 0.

Date Adopted: June 5, 2012.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-304-01001 Definitions. "Additional safety measure" - A component of the tags-plus system that pro-**

vides an impediment (in addition to the energy-isolating device) to the release of energy or the energization or start-up of the machinery, equipment, or system being serviced. Examples of additional safety measures include, but are not limited to, removing an isolating circuit element; blocking a controlling switch; blocking, blanking, or bleeding lines; removing a valve handle or wiring it in place; opening an extra disconnecting device.

**"Affected employee"** - An employee who normally operates or uses the machinery, equipment, or system that is going to be serviced under lockout/tags-plus or who is working in the area where servicing is being performed under lockout/tags-plus. An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

**"Alarm"** - A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

**"Alarm system"** - A system that warns employees at the worksite of danger.

**"Anchorage"** - A secure point to attach lifelines, lanyards, or deceleration devices.

**"Authorized employee"**

(1) An employee who performs one or more of the following lockout/tags-plus responsibilities:

(a) Executes the lockout/tags-plus procedures;

(b) Installs a lock or tags-plus system on machinery, equipment, or systems; or

(c) Services any machine, equipment, or system under lockout/tags-plus application.

(2) An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

**"Body belt"** - A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

**"Body harness"** - Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

**"Capable of being locked out"** - An energy-isolating device is capable of being locked out if it has a locking mechanism built into it, or it has a hasp or other means of attachment to which, or through which, a lock can be affixed. Other energy-isolating devices are capable of being locked out if lockout can be achieved without the need to dismantle, rebuild, or replace the energy-isolating device or permanently alter its energy-control capability.

**"Class II standpipe system"** - A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

**"Cold work"** - Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

**"Contract employer"** - An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that ~~((do not influence))~~ are not directly related to shipyard employment (such as mail delivery or office supply and food vending services).

**"Competent person"** - A person who can recognize and evaluate employee exposure to hazardous substances or to other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

**"Confined space"** - A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

**"Connector"** - A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

- An independent component of the system (such as a carabiner); or

- An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

**"Dangerous atmosphere"** - An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

**"Deceleration device"** - A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

**"Deceleration distance"** - The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

**"Designated area"** - An area established for hot work after an inspection that is free of fire hazards.

**"Director"** - The director of the department of labor and industries or a designated representative.

**"Drop test"** - A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are

watched for at least sixty seconds. Any drop in pressure indicates a leak.

**"Dummy load"** - A device used in place of an antenna to aid in the testing of a radio transmitter that converts transmitted energy into heat to minimize energy radiating outward or reflecting back to its source during testing.

**"Emergency operations"** - Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.

**"Employee"** - Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.

**"Employer"** - An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.

**"Enclosed space"** - A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

**"Energy-isolating device"** - A mechanical device that, when utilized or activated, physically prevents the release or transmission of energy. Energy-isolating devices include, but are not limited to, manually operated electrical circuit breakers; disconnect switches; line valves; blocks; and any similar device used to block or isolate energy. Control-circuit devices (for example, push buttons, selector switches) are not considered energy isolating devices.

**"Equivalent"** - Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

**"Fire hazard"** - A condition or material that may start or contribute to the spread of fire.

**"Fire protection"** - Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

**"Fire response"** - The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

**"Fire response employee"** - A shipyard employee who carries out the duties and responsibilities of shipyard fire-fighting in accordance with the fire safety plan.

**"Fire response organization"** - An organized group knowledgeable, trained, and skilled in shipyard firefighting operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

**"Fire suppression"** - The activities involved in controlling and extinguishing fires.

**"Fire watch"** - The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

**"Fixed extinguishing system"** - A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

**"Flammable liquid"** - Any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up ninety-nine percent or more of the total volume of the mixture.

**"Free fall"** - To fall before a personal fall arrest system begins to apply force to arrest the fall.

**"Free fall distance"** - The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

**"Gangway"** - A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gang-planks and brows.

**"Hazardous energy"** - Any energy source, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature) energies, that could cause injury to employees.

**"Hazardous substance"** - A substance likely to cause injury, illness or disease, or otherwise harm an employee because it is explosive, flammable, poisonous, corrosive, oxidizing, (~~irritant~~) irritating, or otherwise harmful.

**"Health care professional"** - A physician or any other health care professional whose legally permitted scope of practice allows the provider to independently provide, or be delegated the responsibility to provide, some or all of the advice or consultation this subpart requires.

**"Hose systems"** - Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

**"Host employer"** - An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

**"Hot work"** - Riveting, welding, burning or other fire or spark producing operations.

**"Incident management system"** - A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

**"Incipient stage fire"** - A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

**"Inerting"** - The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

**"Interior structural firefighting operations"** - The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

**"Isolated location"** - An area in which employees are working alone or with little assistance from others due to the type, time, or location of their work. Such locations include remote locations or other work areas where employees are not in close proximity to others.

**"Lanyard"** - A flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

**"Lifeline"** - A component consisting of a flexible line to connect to an anchorage at one end to hang vertically (vertical lifeline), or to connect to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

**"Lock"** - A device that utilizes a positive means, either a key or combination lock, to hold an energy isolating device in a "safe" position that prevents the release of energy and the start-up or energization of the machinery, equipment, or system to be serviced.

**"Lockout"** - The placement of a lock on an energy-isolating device in accordance with an established procedure, thereby ensuring that the energy-isolating device and the equipment being controlled cannot be operated until the lock is removed.

**"Lockout/tags-plus coordinator"** - An employee whom the employer designates to coordinate and oversee all lockout and tags-plus applications on vessels or vessel sections and at landside work areas when employees are performing multiple servicing operations on the same machinery, equipment, or systems at the same time, and when employees are servicing multiple machinery, equipment, or systems on the same vessel or vessel section at the same time. The lockout/tags-plus coordinator also maintains the lockout/tags-plus log.

**"Lockout/tags-plus materials and hardware"** - Locks, chains, wedges, blanks, key blocks, adapter pins, self-locking fasteners, or other hardware used for isolating, blocking, or securing machinery, equipment, or systems to prevent the release of energy or the start-up or energization of machinery, equipment, or systems to be serviced.

**"Lower levels"** - Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

**"Motor vehicle"** - Any motor-driven vehicle operated by an employee that is used to transport employees, material, or property. For the purposes of this subpart, motor vehicles include passenger cars, light trucks, vans, motorcycles, all-terrain vehicles, small utility trucks, powered industrial trucks, and other similar vehicles. Motor vehicles do not include boats, or vehicles operated exclusively on a rail or rails.

**"Motor vehicle safety equipment"** - Systems and devices integral to or installed on a motor vehicle for the pur-

pose of effecting the safe operation of the vehicle, and consisting of such systems or devices as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, horns, mirrors, windshields and other windows, and locks.

**"Multiemployer workplace"** - A workplace where there is a host employer and at least one contract employer.

**"Normal production operations"** - The use of machinery or equipment, including, but not limited to, punch presses, bending presses, shears, lathes, keel press rollers, and automated burning machines, to perform a shipyard-employment production process.

**"Personal alert safety system (PASS)"** - A device that sounds a loud signal if the wearer becomes immobilized or is motionless for thirty seconds or more.

**"Personal fall arrest system"** - A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

**"Physical isolation"** - The elimination of a fire hazard by removing the hazard from the work area (at least thirty-five feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

**"Physically isolated"** - Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

**"Portable toilet"** - A nonsewered portable facility for collecting and containing urine and feces. A portable toilet may be either flushable or nonflushable. For purposes of this section, portable toilets do not include privies.

**"Portable unfired pressure vessel"** - A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 CFR Part 178, Subparts C and H.

**"Positioning device system"** - A body belt or body harness system rigged to allow an employee to be supported at an elevated vertical surface, such as a wall or window, and to be able to work with both hands free while leaning.

**"Potable water"** - Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141).

**"Powder actuated fastening tool"** - A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

**"Protected space"** - Any space into which a fixed extinguishing system can discharge.

**"Proximity firefighting"** - Specialized firefighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat

such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity firefighting operations usually are exterior operations but may be combined with structural firefighting operations. Proximity firefighting is not entry firefighting.

**"Qualified instructor"** - A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

**"Qualified person"** - A person who has successfully demonstrated the ability to solve or resolve problems related to the subject matter and work by possessing a recognized degree or certificate of professional standing or by extensive knowledge, training, and experience.

**"Readily accessible/available"** - Capable of being reached quickly enough to ensure, for example, that emergency medical services and first-aid intervention are appropriate or that employees can reach sanitation facilities in time to meet their health and personal needs.

**"Related employment"** - Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

**"Rescue"** - Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

**"Restraint (tether) line"** - A line from an anchorage, or between anchorages, to which the employee is secured so as to prevent the employee from walking or falling off an elevated work surface.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

**"Rope grab"** - A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest the fall of an employee. A rope grab usually uses the principle of inertial locking, cam/level locking or both.

**"Sanitation facilities"** - Facilities, including supplies, maintained for employee personal and health needs such as potable drinking water, toilet facilities, hand-washing and hand-drying facilities, showers (including quick-drenching or flushing) and changing rooms, eating and drinking areas, first-aid stations, and on-site medical-service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking cups, drinking water containers, toilet paper, and towels.

**"Serviceable condition"** - The state or ability of supplies or goods, or of a tool, machine, vehicle, or other device, to be used or to operate in the manner prescribed by the manufacturer.

**"Servicing"** - Workplace activities that involve the construction, installation, adjustment, inspection, modification, testing, or repair of machinery, equipment, or systems. Servicing also includes maintaining machines, equipment, or systems when performing these activities would expose the employee to harm from the start-up or energization of the system being serviced, or the release of hazardous energy.

**"Sewered toilet"** - A fixture maintained for the purpose of urination and defecation that is connected to a sanitary

sewer, septic tank, holding tank (bilge), or on-site sewage-disposal treatment facility, and that is flushed with water.

**"Shall" or "must"** - Mandatory.

**"Shield"** - To install a covering, protective layer, or other effective measure on or around steam hoses or temporary steam-piping systems, including metal fittings and couplings, to protect employees from contacting hot surfaces or elements.

**"Ship breaking"** - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

**"Ship building"** - Construction of a vessel, including the installation of machinery and equipment.

**"Ship repairing"** - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

**"Shipyard firefighting"** - The activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

**"Short bight"** - A loop created in a line or rope that is used to tie back or fasten objects such as hoses, wiring, and fittings.

**"Small hose system"** - A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

**"Standpipe"** - A fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

**"Tag"** - A prominent warning device that includes a means of attachment that can be securely fastened to an energy-isolating device in accordance with an established procedure to indicate that the energy-isolating device and the equipment being controlled must not be operated until the tag is removed by an authorized employee.

**"Tags-plus system"** - A system to control hazardous energy that consists of an energy-isolating device with a tag affixed to it, and at least one additional safety measure.

**"Verification of isolation"** - The means necessary to detect the presence of hazardous energy, which may involve the use of a test instrument (for example, a voltmeter), and, for other than electric shock protection, a visual inspection, or a deliberate attempt to start-up the machinery, equipment, or system.

**"Vermin"** - Insects, birds, and other animals, such as rodents, that may create safety and health hazards for employees.

**"Vessel"** - Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

**"Vessel section"** - A subassembly, module, or other component of a vessel being built or repaired.

**"Walkway"** - Any surface, whether vertical, slanted, or horizontal, on which employees walk, including areas that employees pass through, to perform their job tasks. Walkways include, but are not limited to, access ways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs,



steps, passageways, and scaffolding. If an area is, or could be, used to gain access to other locations, it is to be considered a walkway.

"Work area" - A specific area, such as a machine shop, engineering space, or fabrication area, where one or more employees are performing job tasks.

"Working surface" - Any surface where work is occurring, or areas where tools, materials, and equipment are being staged for performing work.

"Worksite" - A general work location where one or more employees are performing work, such as a shipyard, pier, barge, vessel, or vessel section.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-060 General working conditions— Scope and application.** All sections of this chapter which include WAC 296-304-060 in the section number apply to general working conditions in shipyard employment, including work on vessels, on vessel sections, and at landside operations.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06001 Housekeeping.** (1) Good housekeeping conditions shall be maintained at all times. Adequate aisles and passageways shall be maintained in all work areas. All staging platforms, ramps, stairways, walkways, aisles, and passageways on vessels or dry docks shall be kept clear of all tools, materials, and equipment except that which is in use, and all debris such as welding rod tips, bolts, nuts, and similar material. Hose and electric conductors shall be elevated over or placed under the walkway or working surfaces or covered by adequate crossover planks. While a walkway is being used as a working surface, that portion shall be cordoned off to prevent it from being used as a walkway.

(2) All working areas on vessels and dry docks shall be ~~((kept reasonably free of debris, and construction material shall be so piled as not to present a hazard to employees-))~~;

(a) Cleared of tools, materials, and equipment that are not necessary to perform the job in progress;

(b) Cleared of debris, including solid and liquid wastes, at the end of each workshift or job, whichever occurs first;

(c) Maintained, so far as practicable, in a dry condition. When a wet process is used, the employer shall maintain drainage and provide false floors, platforms, mats, or other dry standing places. When the employer demonstrates that this procedure is not practicable, the employer shall provide each employee working in the wet process with protective footwear, in accordance with WAC 296-304-09013.

(3) Slippery conditions on walkways or working surfaces shall be eliminated as they occur. If it is not practicable for the employer to remove slippery conditions, the employer either shall:

(a) Restrict employees to designated walkways and working surfaces where the employer has eliminated slippery conditions; or

(b) Provide slip-resistant footwear in accordance with WAC 296-304-09013.

(4) Free access shall be maintained at all times to all exits and to all fire-alarm boxes or fire-extinguishing equipment.

(5) All oils, paints, thinners, solvents waste, rags, or other flammable substances shall be disposed of or kept in fire resistant covered containers when not in use.

#### NEW SECTION

**WAC 296-304-06002 Sanitation.** (1) General requirements.

(a) The employer shall provide adequate and readily accessible sanitation facilities.

(b) The employer shall establish and implement a schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary, and serviceable condition.

(2) Potable water. The employer shall provide potable water for all employee health and personal needs and ensure that only potable water is used for these purposes.

(a) The employer shall provide potable drinking water in amounts that are adequate to meet the health and personal needs of each employee.

(b) The employer shall dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer shall prohibit the use of shared drinking cups, dipper, and water bottles.

(3) Nonpotable water.

(a) The employer may use nonpotable water for other purposes such as firefighting and cleaning outdoor premises so long as it does not contain chemicals, fecal matter, coliform, or other substances at levels that may create a hazard for employees.

(b) The employer shall clearly mark nonpotable water supplies and outlets as "not safe for health or personal use."

(4) Toilets.

(a) General requirements. The employer shall ensure that sewer and portable toilets:

(i) Provide privacy at all times. When a toilet facility contains more than one toilet, each toilet shall occupy a separate compartment with a door and walls or partitions that are sufficiently high to ensure privacy; and

(ii) Are separate for each sex, except as provided in (a)(ii)(B) of this subsection;

(A) The number of toilets provided for each sex shall be based on the maximum number of employees of that sex present at the worksite at any one time during a workshift. A single occupancy toilet room shall be counted as one toilet regardless of the number of toilets it contains; and

(B) The employer does not have to provide separate toilet facilities for each sex when they will not be occupied by more than one employee at a time, can be locked from the inside, and contain at least one toilet.

(iii) The employer shall establish and implement a schedule to ensure that each sewer and portable toilet is maintained in a clean, sanitary, and serviceable condition.

(b) Minimum number of toilets. The employer shall provide at least the following number of toilets for each sex. Portable toilets that meet the requirements in (c) of this subsection may be included in the minimum number of toilets.

**Table F-1**  
**Minimum Number of Toilets**

Number of employees of each sex	Minimum number of toilets per sex
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	1 additional toilet for each additional 40 employees

**Note to Table F-1:** When toilets will only be used by men, urinals may be provided instead of toilets, except that the number of toilets in such cases shall not be reduced to less than two-thirds of the minimum specified.

(c) Portable toilets.

(i) The employer shall provide portable toilets, pursuant to paragraph (4)(b) of this section and Table F-1, only when the employer demonstrates that it is not feasible to provide sewerated toilets, or when there is a temporary increase in the number of employees for a short duration of time.

(ii) The employer shall ensure that each portable toilet is vented and equipped, as necessary, with lighting.

(d) Exception for normally unattended worksites and mobile work crews. The requirement to provide toilets does not apply to normally unattended worksites and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary, and serviceable condition and meet the other requirements of this section.

(5) Handwashing facilities.

(a) The employer shall provide handwashing facilities at or adjacent to each toilet facility.

(b) The employer shall ensure that each handwashing facility:

(i) Is equipped with either hot and cold or lukewarm running water and soap, or with waterless skin-cleansing agents that are capable of disinfecting the skin or neutralizing the contaminants to which the employee may be exposed; and

(ii) If the facility uses soap and water, it is supplied with clean, single-use hand towels stored in a sanitary container and a sanitary means for disposing of them, clean individual sections of continuous cloth toweling, or a hand-drying air blower.

(c) The employer shall inform each employee engaged in the application of paints or coatings or in other operations in which hazardous or toxic substances can be ingested or absorbed about the need for removing surface contaminants from their skin's surface by thoroughly washing their hands and face at the end of the workshift and prior to eating, drinking, or smoking.

(6) Showers.

(a) When showers are required by an OSHA standard, the employer shall provide one shower for each ten, or frac-

tion of ten, employees of each sex who are required to shower during the same workshift.

(b) The employer shall ensure that each shower is equipped with soap, hot and cold water, and clean towels for each employee who uses the shower.

(7) Changing rooms. When an employer provides protective clothing to prevent employee exposure to hazardous or toxic substances, the employer shall provide the following:

(a) Changing rooms that provide privacy for each sex; and

(b) Storage facilities for street clothes, as well as separate storage facilities for protective clothing.

(8) Eating, drinking, and break areas. The employer shall ensure that food, beverages, and tobacco products are not consumed or stored in any area where employees may be exposed to hazardous or toxic substances.

(9) Waste disposal.

(a) The employer shall provide waste receptacles that meet the following requirements:

(i) Each receptacle is constructed of materials that are corrosion resistant, leak-proof, and easily cleaned or disposable;

(ii) Each receptacle is equipped with a solid tight-fitting cover, unless it can be kept in clean, sanitary, and serviceable condition without the use of a cover;

(iii) Receptacles are provided in numbers, sizes, and locations that encourage their use; and

(iv) Each receptacle is emptied as often as necessary to prevent it from overflowing and in a manner that does not create a hazard for employees. Waste receptacles for food shall be emptied at least every day, unless unused.

(b) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage that could endanger their safety and health.

(c) The employer shall ensure that employees working beneath or on the outboard side of a vessel are not contaminated by drainage or waste from overboard discharges.

(10) Vermin control.

(a) To the extent reasonably practicable, the employer shall clean and maintain the workplace in a manner that prevents vermin infestation.

(b) Where vermin are detected, the employer shall implement and maintain an effective vermin-control program.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

**WAC 296-304-06003 Illumination.** (1) All means of access and walkways leading to working areas as well as the working areas themselves shall be adequately illuminated.

(a) For landside areas, the employer shall provide illumination that meets the levels set forth in Table F-2.

**Table F-2**  
**Minimum Lighting Intensities in Foot-Candles**

<u>Lumens (foot-candles)</u>	<u>Area or operation</u>
<u>3</u>	<u>General areas on vessels and vessel sections such as accessways, exits, gangways, stairs, and walkways.</u>
<u>5</u>	<u>General landside areas such as corridors, exits, stairs, and walkways.</u>
<u>5</u>	<u>All assigned work areas on any vessel or vessel section.</u>
<u>5</u>	<u>Landside tunnels, shafts, vaults, pumping stations, and underground work areas.</u>
<u>10</u>	<u>Landside work areas such as machine shops, electrical equipment rooms, carpenter shops, lofts, tool rooms, warehouses, and outdoor work areas.</u>
<u>10</u>	<u>Changing rooms, showers, sewered toilets, and eating, drinking, and break areas.</u>
<u>30</u>	<u>First-aid stations, infirmaries, and offices.</u>

**Note to Table F-2:** The required illumination levels in this table do not apply to emergency or portable lights.

(b) For vessels and vessel sections, the employer shall provide illumination that meets the levels set forth in the table to (a) of this subsection or meet ANSI/IESNA RP-7-01.

(c) When adequate illumination is not obtainable by permanent lighting sources, temporary lighting may be used as supplementation.

(d) The employer shall ensure that neither matches nor open-flame devices are used for lighting.

(2) Temporary lights shall meet the following requirements:

(a) Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed((-));

(b) Temporary lights shall be equipped with heavy duty electric cords with connections and insulation maintained in safe condition. Temporary lights shall not be suspended by their electric cords unless cords and lights are designed for this means of suspension. Splices (~~which~~) must have insulation ((equal to that of the cable are permitted.)) with a capacity that exceeds that of the original insulation of the cord; and

(c) Cords shall be kept clear of working spaces and walkways or other locations in which they are readily exposed to damage.

(3) Exposed noncurrent-carrying metal parts of temporary lights furnished by the employer shall be grounded either through a third wire in the cable containing the circuit conductors or through a separate wire which is grounded at the source of the current. Grounding shall be in accordance with the requirements of WAC 296-304-08003(2).

(4) Where temporary lighting from sources outside the vessel is the only means of illumination, portable emergency lighting equipment shall be available to provide illumination for safe movement of employees. If natural sunlight provides sufficient illumination, portable or emergency lights are not required.

(5) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of WAC 296-304-02005 (2)(i).

(6) Temporary lighting stringers or streamers shall be so arranged as to avoid overloading of branch circuits. Each branch circuit shall be equipped with overcurrent protection of capacity not exceeding the rated current carrying capacity of the cord used.

(7) Explosion-proof, self-contained lights. The employer shall provide and ensure that each employee uses only explosion-proof, self-contained temporary and portable lights, approved for hazardous conditions by a nationally recognized testing laboratory (NRTL), in any area that the atmosphere is determined to contain a concentration of flammable vapors that are at or above ten percent of the lower explosive limit (LEL).

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06005 Utilities.** (1) Steam supply and hoses.

(a) Prior to supplying a vessel with steam from a source outside the vessel, the employer shall ascertain from responsible vessel's representatives, having knowledge of the condition of the plant, the safe working pressure of the vessel's steam system. The employer shall install a pressure gauge and a relief valve of proper size and capacity at the point where the temporary steam hose joins the vessel's steam piping system or systems. The relief valve shall be set and capable of relieving at a pressure not exceeding the safe working pressure of the vessel's system in its present condition, and there shall be no means of isolating the relief valve from the system which it protects. The pressure gauge and relief valve shall be located so as to be visible and readily accessible, and each relief valve is to be positioned so it is not likely to cause injury if steam is released.

(b) Steam hose and fittings shall have a safety factor of not less than five, and shall be used in accordance with the manufacturer's specifications.

(c) When steam hose is hung in a bight or bights, the weight shall be relieved by appropriate lines to reduce tension on the hose and its fittings. The hose shall be protected against chafing.

(d) Steam hose shall be protected from damage and hose and temporary piping shall be so shielded where passing through normal work areas as to prevent accidental contact by employees.

(2) Electric power. ~~((a))~~ When the vessel is supplied with electric power from a source outside the vessel, the following precautions shall be taken prior to energizing the vessel's circuits:

~~((+))~~ (a) If in dry dock, the vessel shall be adequately grounded.

~~((+))~~ (b) The employer shall ascertain from responsible vessel's representatives, having a knowledge of the condition of the vessel's electrical system, that all circuits to be energized are in a safe condition.

~~((+))~~ (c) All circuits to be energized shall be equipped with overcurrent protection of capacity not exceeding the rated current carrying capacity of the cord used.

(3) Infrared electrical heat lamps. ~~((+))~~ All infrared electrical heat lamps shall be equipped with guards that surround the lamps with the exception of the face, to minimize accidental contact with the lamps.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06007 Work in confined or isolated spaces.** When any work is performed in a confined space, except as provided in WAC 296-304-04001 (2)(c), or when an employee is working alone in an isolated location, ~~((frequent checks shall be made to ensure the safety of))~~ the employee~~(s)~~ shall be checked, by sight or verbal communication:

(1) Throughout each workshift at regular intervals appropriate to the job assignment to ensure the employee's safety and health; and

(2) At the end of the job assignment or at the end of the workshift, whichever occurs first.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06009 Work on or in the vicinity of radar and radio.** ~~((1) No employees other than radar or radio repairmen shall be permitted to work on masts, king posts or other aloft areas unless the radar and radio are secured or otherwise made incapable of radiation. In either event, the radio and radar shall be appropriately tagged.~~

~~(2) Testing of radar or radio shall not be done until the employer can schedule such tests at a time when no work is in progress aloft or personnel can be cleared from the danger area according to minimum safe distances established for and based on the type, model, and power of the equipment.)~~ (1) The employer shall service each vessel's radar and communication systems in accordance with WAC 296-304-06016. Control of hazardous energy.

(2) The employer shall secure each vessel's radar and communication system so it is incapable of energizing or emitting radiation before any employee begins work:

(a) On or in the vicinity of the system;

(b) On or in the vicinity of a system equipped with a dummy load; or

(c) Aloft, such as on a mast or king post.

(3) When a vessel's radar or communication system is operated, serviced, repaired, or tested, the employer shall ensure that:

(a) There is no other work in progress aloft; and

(b) No employee is closer to the system's antenna or transmitter than the manufacturer's specified safe minimum distance for the type, model, and power of the equipment.

(4) The employer shall ensure that no employee enters an area designated as hazardous by manufacturers' specifications while a radar or communication system is capable of emitting radiation.

(5) The requirements of this section do not apply when a radar or communication system is incapable of emitting radiation at levels that could injure workers in the vicinity of the system, or if the radar or communication system is incapable of energizing in a manner than could injure workers working on or in the vicinity of the system.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06011 Work in or on lifeboats.** (1) Before employees are permitted to work in or on a lifeboat, either stowed or in a suspended position, the employer shall ensure that the boat is secured independently of the releasing gear to prevent the boat from falling due to accidental tripping of the releasing gear and movement of the davits or capsizing of a boat in chocks.

(2) Employees shall not be permitted to remain in boats while the boats are being hoisted ~~((into final stowed position))~~ or lowered, except when the employer demonstrates that it is necessary to conduct operational tests or drills over water, or in the event of an emergency.

(3) Employees shall not be permitted to work on the outboard side of lifeboats stowed on their chocks unless the boats are secured by gripes or otherwise secured to prevent them from swinging outboard.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-304-06013 ~~((Health and sanitation))~~ Hazardous materials. "Hazardous material"** - A material with one or more of the following characteristics:

- Has a flash point below 140°F, closed cup, or is subject to spontaneous heating;
- Has a threshold limit value below 500 p.p.m. in the case of a gas or vapor, below 500 mg./m.3 for fumes, and below 25 m.p.p.c.f. in case of a dust;
- Has a single dose oral LD50 below 500 mg./kg.;
- Is subject to polymerization with the release of large amounts of energy;
- Is a strong oxidizing or reducing agent;
- Causes first degree burns to skin in short time exposure, or is systematically toxic by skin contact; or
- In the course of normal operations, may produce dusts, gases, fumes, vapors, mists, or smokes that have one or more of the above characteristics.

(1) No chemical product, such as a solvent or preservative; no structural material, such as cadmium or zinc coated steel, or plastic material; and no process material, such as welding filler metal; which is a hazardous material may be used until the employer has ascertained the potential fire, toxic, or reactivity hazards which are likely to be encountered in the handling, application, or utilization of such a material.

(2) In order to ascertain the hazards, as required by subsection (1) of this section, the employer shall obtain the fol-

lowing items of information which are applicable to a specific product or material to be used:

(a) The name, address, and telephone number of the source of the information specified in this section preferably those of the manufacturer of the product or material.

(b) The trade name and synonyms for a mixture of chemicals, a basic structural material, or for a process material; and the chemical name and synonyms, chemical family, and formula for a single chemical.

(c) Chemical names of hazardous ingredients, including, but not limited to, those in mixtures, such as those in: (i) Paints, preservatives, and solvents; (ii) alloys, metallic coatings, filler metals and their coatings or core fluxes; and (iii) other liquids, solids, or gases (e.g., abrasive materials).

(d) An indication of the percentage, by weight or volume, which each ingredient of a mixture bears to the whole mixture, and of the threshold limit value of each ingredient, in appropriate units.

(e) Physical data about a single chemical or a mixture of chemicals, including boiling point, in degrees Fahrenheit; vapor pressure, in millimeters of mercury; vapor density of gas or vapor (air=1); solubility in water, in percent by weight; specific gravity of material (water=1); percentage volatile, by volume, at 70°F.; evaporation rate for liquids (either butyl acetate or ether may be taken as 1); and appearance and odor.

(f) Fire and explosion hazard data about a single chemical or a mixture of chemicals, including flashpoint, in degrees Fahrenheit; flammable limits, in percent by volume in air; suitable extinguishing media or agents; special firefighting procedures; and unusual fire and explosion hazard information.

(g) Health hazard data, including threshold limit value, in appropriate units, for a single hazardous chemical or for the individual hazardous ingredients of a mixture as appropriate, effects of overexposure; and emergency and first-aid procedures.

(h) Reactivity data, including stability, incompatibility, hazardous decomposition products, and hazardous polymerization.

(i) Procedures to be followed and precautions to be taken in cleaning up and disposing of materials leaked or spilled.

(j) Special protection information, including use of personal protective equipment, such as respirators, eye protection, and protective clothing, and of ventilation, such as local exhaust, general, special, or other types.

(k) Special precautionary information about handling and storing.

(l) Any other general precautionary information.

(3) The pertinent information required by subsection (2) of this section shall be recorded either on United States Department of Labor Form LSB 00S-4, Material Safety Data Sheet, or on an essentially similar form which has been approved by the department of labor and industries. Copies of Form LSB 00S-4 may be obtained at any of the following regional offices of the occupational safety and health administration:

(a) Pacific region. (Arizona, California, Hawaii, and Nevada.)

10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102.

(b) Region X, OSHA, (Alaska, Washington, Idaho, and Oregon), 1111 3rd Ave. Suite 715, Seattle, Washington 98101.

A completed MSDS form shall be preserved and available for inspection for each hazardous chemical on the work-site.

(4) The employer shall instruct employees who will be exposed to the hazardous materials as to the nature of the hazards and the means of avoiding them.

(5) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under subsection (1) of this section and those hazards for which specific precautions are required in WAC 296-304-020 through 296-304-04013.

(6) The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

(7) The employer shall not permit eating or smoking in areas undergoing surface preparation or preservation or where shiprepairing, shipbuilding, or shipbreaking operations produce atmospheric contamination.

(8) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage and shall ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(9) Requirements of WAC 296-800-170, Chemical hazard communication program, will apply to shiprepairing, shipbuilding, and shipbreaking when potential hazards of chemicals and communicating information concerning hazards and appropriate protective equipment is applicable to an operation.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-06015 First aid.** ~~((1) Unless a first aid room and a qualified attendant are close at hand and prepared to render first aid to employees on behalf of the employer, the employer shall furnish a first aid kit for each vessel on which work is being performed, except that when work is being performed on more than one small vessel at one pier, only one kit shall be required. The kit, when required, shall be kept close to the vessel and at least one employee, close at hand, shall be qualified to administer first aid to the injured.~~

~~(2) The first aid kit shall consist of a weatherproof container with individual sealed packages for each type of item. The contents of such kit shall contain a sufficient quantity of at least the following types of items:~~

~~Gauze roller bandages, 1 inch and 2 inch.~~

~~Gauze compress bandages, 4 inch.~~

~~Adhesive bandages, 1 inch.~~

~~Triangular bandage, 40 inch.~~

~~Ammonia inhalants and ampules.~~

~~Antiseptic applicators or swabs.  
Burn dressing.  
Eye dressing.  
Wire or thin board splints.  
Forceps and tourniquet.~~

~~(3) The contents of the first-aid kit shall be checked before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.~~

~~(4) There shall be available for each vessel on which ten or more employees are working one Stokes basket stretcher, or equivalent, permanently equipped with bridles for attaching to the hoisting gear, except that no more than two stretchers are required on each job location. A blanket or other liner suitable for transferring the patient to and from the stretcher shall be provided. Stretchers shall be kept close to the vessels. This section does not apply where ambulance services which are available are known to carry such stretchers.)) (1) The employer shall ensure that emergency medical services and first aid are readily accessible.~~

~~(2) The employer shall ensure that health care professionals are readily available for advice and consultation on matters of workplace health.~~

~~(3) First-aid providers.~~

~~(a) The employer shall ensure that there is an adequate number of employees trained as first-aid providers at each worksite during each workshift unless:~~

~~(i) There is an on-site clinic or infirmary with first-aid providers during each workshift; or~~

~~(ii) The employer can demonstrate that outside first-aid providers (i.e., emergency medical services) can reach the worksite within five minutes of a report of injury or illness. The employer must take appropriate steps to ascertain that emergency medical assistance will be readily available promptly if an injury or illness occurs.~~

~~(b) The employer shall ensure that a first-aid provider is able to reach an injured/ill employee within five minutes of a report of a serious injury, illness, or accident such as one involving cardiac arrest, acute breathing problems, uncontrolled bleeding, suffocation, electrocution, or amputation.~~

~~(c) The employer shall use the following factors in determining the number and location of employees who must have first-aid training: Size and location of each worksite; the number of employees at each worksite; the hazards present at each worksite; and the distance of each worksite from hospitals, clinics, and rescue squads.~~

~~(d) The employer shall ensure that first-aid providers are trained to render first aid, including cardiopulmonary resuscitation (CPR).~~

~~(e) The employer shall ensure that each first-aid provider maintains current first aid and CPR certifications, such as issued by the Red Cross, American Heart Association, or other equivalent organization.~~

~~(4) First-aid supplies.~~

~~(a) The employer shall provide and maintain adequate first-aid supplies that are readily accessible to each worksite. An employer's on-site infirmary or clinic containing first-aid supplies that are readily accessible to each worksite complies with this requirement.~~

~~(b) The employer shall ensure that the placement, content, and amount of first-aid supplies are adequate for the size~~

and location of each worksite, the number of employees at each worksite, the hazards present at each worksite, and the distance of each worksite from hospitals, clinics, and rescue squads.

(c) The employer shall ensure that first-aid supplies are placed in a weatherproof container.

(d) The employer shall maintain first-aid supplies in a dry, sterile, and serviceable condition.

(e) The employer shall replenish first-aid supplies as necessary to ensure that there is an adequate supply when needed.

(f) The employer shall inspect first-aid supplies at sufficient intervals to ensure that they are adequate and in a serviceable condition.

(5) Quick-drenching and flushing facilities. Where the potential exists for an employee to be splashed with a substance that may result in an acute or serious injury, the employer shall provide facilities for quick-drenching or flushing the eyes and body. The employer shall ensure that such a facility is located for immediate emergency use within close proximity to operations where such substances are being used.

(6) Basket stretchers.

(a) The employer shall provide an adequate number of basket stretchers, or the equivalent, readily accessible to where work is being performed on a vessel or vessel section. The employer is not required to provide basket stretchers or the equivalent where emergency response services have basket stretchers or the equivalent that meet the requirements of this subsection (6)(a).

(b) The employer shall ensure each basket stretcher, or the equivalent, is equipped with:

(i) Permanent lifting bridles that enable the basket stretcher, or the equivalent, to be attached to hoisting gear capable of lifting at least five thousand pounds (2,270 kg);

(ii) Restraints that are capable of securely holding the injured/ill employee while the basket stretcher, or the equivalent, is lifted or moved; and

(iii) A blanket or other suitable covering for the injured/ill employee.

(c) The employer shall store basket stretchers, or the equivalent, and related equipment (i.e., restraints, blankets) in a clearly marked location in a manner that prevents damage and protects the equipment from environmental conditions.

(d) The employer shall inspect stretchers, or the equivalent, and related equipment at intervals that ensure the equipment remains in a safe and serviceable condition, but at least once a year.

**Appendix A to WAC 296-304-06015 - First-aid kits and automated external defibrillators (nonmandatory)**

1. First-aid supplies are required to be adequate and readily accessible under WAC 296-304-06015 (1) and (4). An example of the minimal contents of a generic first-aid kit for workplace settings is described in ANSI/ISEA Z308.1-2009, "Minimum Requirements for Workplace First Aid Kits and Supplies." The contents of the kit listed in this ANSI standard should be adequate for small worksites. When larger operations or multiple operations are being conducted at the same worksite, employers should determine the need for

additional first-aid kits, additional types of first-aid equipment and supplies, and additional quantities and types of supplies and equipment in the first-aid kits.

2. In a similar fashion, employers that have unique or changing first-aid needs at their worksite may need to enhance their first-aid kits. The employer can use the OSHA 300 Log, OSHA 301 Incident Report form, or other reports to identify these unique problems. Consultation from the local fire or rescue department, appropriate health care professional or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their worksite, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically, and augment first-aid kits appropriately.

3. If it is reasonably anticipated that employees will be exposed to blood or other potentially infectious materials while using first-aid supplies, employers must provide appropriate personal protective equipment (PPE) in compliance with the provisions of chapter 296-823 WAC, bloodborne pathogens. This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.

4. Employers who provide automated external defibrillators (AEDs) at their workplaces should designate who will use AEDs and train those employees so they know how to correctly use the AEDs. Although a growing number of AEDs are now designed to be used by any person, even without training, training reinforces proper use and promotes the usefulness of AEDs as part of an effective cardiopulmonary resuscitation plan. For AEDs to be effective, employers should:

a. Ensure that AEDs are located so they can be utilized within three to five minutes of a report of an accident or injury;

b. Ensure that employees use AEDs in accordance with manufacturers' specifications; and

c. Inspect, test, and maintain AEDs in accordance with manufacturers' specifications.

#### NEW SECTION

**WAC 296-304-06016 Control of hazardous energy (lockout/tags-plus). Definition: "Tags-plus system" - A system to control hazardous energy that consists of an energy-isolating device with a tag affixed to it, and at least one additional safety measure.**

(1) Scope, application, and effective dates.

(a) Scope. This section covers the servicing of machinery, equipment, and systems when the energization or start-up of machinery, equipment, or systems, or the release of hazardous energy, could endanger an employee.

(b) Application.

(i) This section applies to the servicing of any machinery, equipment, or system that employees use in the course of shipyard employment work and that is conducted:

(A) In any landside facility that performs shipyard employment work; and

(B) On any vessel or vessel section.

(ii) This section applies to such servicing conducted on a vessel by any employee including, but not limited to, the ship's officers and crew unless such application is preempted by the regulations of another agency.

(c) When other standards in this chapter require the use of a lock or tag, the employer shall use and supplement them with the procedural and training requirements specified in this section.

(d) Exceptions. This section does not apply to:

(i) Work on cord- and plug-connected machinery, equipment, or system, provided the employer ensures that the machinery, equipment, or system is unplugged and the plug is under the exclusive control of the employee performing the servicing;

(ii) Minor servicing activities performed during normal production operations, including minor tool changes and adjustments, that are routine, repetitive, and integral to the use of the machinery, equipment, or system, provided the employer ensures that the work is performed using measures that provide effective protection from energization, start-up, or the release of hazardous energy.

(2) Lockout/tags-plus program. The employer shall establish and implement a written program and procedures for lockout and tags-plus systems to control hazardous energy during the servicing of any machinery, equipment, or system in shipyard employment. The program shall cover:

(a) Procedures for lockout/tags-plus systems while servicing machinery, equipment, or systems in accordance with subsection (3) of this section;

(b) Procedures for protecting employees involved in servicing any machinery, equipment, or system in accordance with subsections (4) through (13) of this section;

(c) Specifications for locks and tags-plus hardware in accordance with subsection (14) of this section;

(d) Employee information and training in accordance with subsection (15) of this section;

(e) Incident investigations in accordance with subsection (16) of this section; and

(f) Program audits in accordance with subsection (17) of this section.

(3) General requirements.

(a) The employer shall ensure that, before any authorized employee performs servicing when energization or start-up, or the release of hazardous energy, may occur, all energy sources are identified and isolated, and the machinery, equipment, or system is rendered inoperative.

(b) If an energy-isolating device is capable of being locked, the employer shall ensure the use of a lock to prevent energization or start-up, or the release of hazardous energy, before any servicing is started, unless the employer can demonstrate that the utilization of a tags-plus system will provide full employee protection as set forth in (f) of this subsection.

(c) If an energy-isolating device is not capable of being locked, the employer shall ensure the use of a tags-plus system to prevent energization or start-up, or the release of hazardous energy, before any servicing is started.

(d) Each tags-plus system shall consist of:

(i) At least one energy-isolating device with a tag affixed to it; and

(ii) At least one additional safety measure that, along with the energy isolating device and tag required in (d)(i) of this subsection, will provide the equivalent safety available from the use of a lock.

(e) After the effective date of this section, the employer shall ensure that each energy-isolating device for any machinery, equipment, or system is designed to accept a lock whenever the machinery, equipment, or system is extensively repaired, renovated, modified, or replaced, or whenever new machinery, equipment, or systems are installed. This requirement does not apply when a shipyard employer:

(i) Does not own the machinery, equipment, or system; or

(ii) Builds or services a vessel or vessel section according to customer specifications.

(f) Full employee protection.

(i) When a tag is used on an energy-isolating device that is capable of being locked out, the tag shall be attached at the same location that the lock would have been attached; and

(ii) The employer shall demonstrate that the use of a tags-plus system will provide a level of safety equivalent to that obtained by using a lock. In demonstrating that an equivalent level of safety is achieved, the employer shall:

(A) Demonstrate full compliance with all tags-plus related provisions of this standard; and

(B) Implement such additional safety measures as are necessary to provide the equivalent safety available from the use of a lock.

(g) Lockout/tags-plus coordination.

(i) The employer shall establish and implement lockout/tags-plus coordination when:

(A) Employees on vessels and in vessel sections are servicing multiple machinery, equipment, or systems at the same time; or

(B) Employees on vessels, in vessel sections, and at landside facilities are performing multiple servicing operations on the same machinery, equipment, or system at the same time.

(ii) The coordination process shall include a lockout/tags-plus coordinator and a lockout/tags-plus log. Each log shall be specific to each vessel, vessel section, and landside work area.

(iii) The employer shall designate a lockout/tags-plus coordinator who is responsible for overseeing and approving:

(A) The application of each lockout and tags-plus system;

(B) The verification of hazardous energy isolation before the servicing of any machinery, equipment, or system begins; and

(C) The removal of each lockout and tags-plus system.

(iv) The employer shall ensure that the lockout/tags-plus coordinator maintains and administers a continuous log of each lockout and tags-plus system. The log shall contain:

(A) Location of machinery, equipment, or system to be serviced;

(B) Type of machinery, equipment, or system to be serviced;

(C) Name of the authorized employee applying the lockout/tags-plus system;

(D) Date that the lockout/tags-plus system is applied;

(E) Name of authorized employee removing the lock or tags-plus system; and

(F) Date that lockout/tags-plus system is removed.

(4) Lockout/tags-plus written procedures.

(a) The employer shall establish and implement written procedures to prevent energization or start-up, or the release of hazardous energy, during the servicing of any machinery, equipment, or system. Each procedure shall include:

(i) A clear and specific outline of the scope and purpose of the lockout/tags-plus procedure;

(ii) The means the employer will use to enforce compliance with the lockout/tags-plus program and procedures; and

(iii) The steps that must be followed for:

(A) Preparing for shutting down and isolating of the machinery, equipment, or system to be serviced, in accordance with subsection (5) of this section;

(B) Applying the lockout/tags-plus system, in accordance with subsection (6) of this section;

(C) Verifying isolation, in accordance with subsection (7) of this section;

(D) Testing the machinery, equipment, or system, in accordance with subsection (8) of this section;

(E) Removing lockout/tags-plus systems, in accordance with subsection (9) of this section;

(F) Starting up the machinery, equipment, or system that is being serviced, in accordance with subsection (10) of this section;

(G) Applying lockout/tags-plus systems in group servicing operations, in accordance with subsection (11) of this section;

(H) Addressing multiemployer worksites involved in servicing any machinery, equipment, or system, in accordance with subsection (12) of this section; and

(I) Addressing shift or personnel changes during servicing operations, in accordance with subsection (13) of this section.

**Note to (a) of this subsection:** The employer need only develop a single procedure for a group of similar machines, equipment, or systems if the machines, equipment, or systems have the same type and magnitude of energy and the same or similar types of controls, and if a single procedure can satisfactorily address the hazards and the steps to be taken to control these hazards.

(b) The employer's lockout procedures do not have to be in writing for servicing machinery, equipment, or systems, provided that all of the following conditions are met:

(i) There is no potential for hazardous energy to be released (or to reaccumulate) after shutting down, or restoring energy to, the machinery, equipment, or system;

(ii) The machinery, equipment, or system has a single energy source that can be readily identified and isolated;

(iii) The isolation and lock out of that energy source will result in complete deenergization and deactivation of the machinery, equipment, or system, and there is no potential for reaccumulation of energy;

(iv) The energy source is isolated and secured from the machinery, equipment, or system during servicing;

(v) Only one lock is necessary for isolating the energy source;



(vi) The lock is under the exclusive control of the authorized employee performing the servicing;

(vii) The servicing does not create a hazard for any other employee; and

(viii) The employer, in utilizing this exception, has not had any accidents or incidents involving the activation or reenergization of this type of machinery, equipment, or system during servicing.

(5) Procedures for shutdown and isolation.

(a) Before an authorized employee shuts down any machinery, equipment, or system, the employer shall:

(i) Ensure that the authorized employee has knowledge of:

(A) The source, type, and magnitude of the hazards associated with energization or start-up of the machine, equipment, or system;

(B) The hazards associated with the release of hazardous energy; and

(C) The means to control these hazards; and

(ii) Notify each affected employee that the machinery, equipment, or system will be shutdown and deenergized prior to servicing, and that a lockout/tags-plus system will be implemented.

(b) The employer shall ensure that the machinery, equipment, or system is shutdown according to the written procedures the employer established.

(c) The employer shall use an orderly shutdown to prevent exposing any employee to risks associated with hazardous energy.

(d) The employer shall ensure that the authorized employee relieves, disconnects, restrains, or otherwise renders safe all potentially hazardous energy that is connected to the machinery, equipment, or system.

(6) Procedures for applying lockout/tags-plus systems.

(a) The employer shall ensure that only an authorized employee applies a lockout/tags-plus system.

(b) When using lockout systems, the employer shall ensure that the authorized employee affixes each lock in a manner that will hold the energy isolating device in a safe or off position.

(c) When using tags-plus systems, the employer shall ensure that the authorized employee affixes a tag directly to the energy-isolating device that clearly indicates that the removal of the device from a safe or off position is prohibited.

(d) When the tag cannot be affixed directly to the energy-isolating device the employer shall ensure that the authorized employee locates it as close as safely possible to the device, in a safe and immediately obvious position.

(e) The employer shall ensure that each energy-isolating device that controls energy to the machinery, equipment, or system is effective in isolating the machinery, equipment, or system from all potentially hazardous energy source(s).

(7) Procedures for verification of deenergization and isolation.

(a) Before servicing machinery, equipment, or a system that has a lockout/tags-plus system, the employer shall ensure that the authorized employee, or the primary authorized employee in a group lockout/tags-plus application, verifies

that the machinery, equipment, or system is deenergized and all energy sources isolated.

(b) The employer shall ensure that the authorized employee, or the primary authorized employee in a group lockout/tags-plus application, continues verifying deenergization and isolation while servicing the machinery, equipment, or system.

(c) Each authorized employee in a group lockout/tags-plus application who will be servicing the machinery, equipment, or system must be given the option to verify that the machinery, equipment, or system is deenergized and all energy sources isolated, even when verification is performed by the primary authorized employee.

(8) Procedures for testing. In each situation in which a lockout/tags-plus system must be removed temporarily and the machinery, equipment, or system restarted to test it or to position a component, the employer shall ensure that the authorized employee does the following in sequence:

(a) Clears tools and materials from the work area;

(b) Removes nonessential employees from the work area;

(c) Removes each lockout/tags-plus system in accordance with subsection (9) of this section;

(d) Restarts the machinery, equipment, or system and then proceeds with testing or positioning; and

(e) After completing testing or positioning, deenergizes and shuts down the machinery, equipment, or system and reapplies all lockout/tags-plus systems in accordance with subsections (5) through (7) of this section to continue servicing.

(9) Procedures for removal of lockout and tags-plus systems.

(a) Before removing any lockout/tags-plus system and restoring the machinery, equipment, or system to use, the employer shall ensure that the authorized employee does the following:

(i) Notifies all other authorized and affected employees that the lockout/tags-plus system will be removed;

(ii) Ensures that all employees in the work area have been safely positioned or removed; and

(iii) Inspects the work area to ensure that nonessential items have been removed and machinery, equipment, or system components are operationally intact.

(b) The employer shall ensure that each lock or tags-plus system is removed by the authorized employee who applied it.

(c) When the authorized employee who applied the lockout/tags-plus system is not available to remove it, the employer may direct removal by another authorized employee, provided the employer developed and incorporated into the lockout/tags-plus program the specific procedures and training that address such removal, and demonstrates that the specific procedures used provide a level of employee safety that is at least as effective in protecting employees as removal of the system by the authorized employee who applied it. After meeting these requirements, the employer shall do the following in sequence:

(i) Verify that the authorized employee who applied the lockout/tags-plus system is not in the facility;

(ii) Make all reasonable efforts to contact the authorized employee to inform him/her that the lockout/tags-plus system has been removed; and

(iii) Ensure that the authorized employee who applied the lock or tags-plus system has knowledge of the removal before resuming work on the affected machinery, equipment, or system.

(10) Procedures for start-up.

(a) Before an authorized employee turns on any machinery, equipment, or system after servicing is completed, the employer shall ensure that the authorized employee has knowledge of the source, type, and magnitude of the hazards associated with energization or start-up, and the means to control these hazards.

(b) The employer shall execute an orderly start-up to prevent or minimize any additional or increased hazard(s) to employees. The employer shall perform the following tasks before starting up the machinery, equipment, or system:

(i) Clear tools and materials from the work area;

(ii) Remove any nonessential employees from the work area; and

(iii) Start-up the machinery, equipment, or system according to the detailed procedures the employer established for that machinery, equipment, or system.

(11) Procedures for group lockout/tags-plus. When more than one authorized employee services the same machinery, equipment, or system at the same time, the following procedures shall be implemented:

(a) Primary authorized employee. The employer shall:

(i) Assign responsibility to one primary authorized employee for each group of authorized employees performing servicing on the same machinery, equipment, or system;

(ii) Ensure that the primary authorized employee determines the safe exposure status of each authorized employee in the group with regard to the lockout/tags-plus system;

(iii) Ensure that the primary authorized employee obtains approval from the lockout/tags-plus coordinator to apply and remove the lockout/tags-plus system; and

(iv) Ensure that the primary authorized employee coordinates the servicing operation with the coordinator when required by subsection (3)(g)(i) of this section.

(b) Authorized employees. The employer shall either:

(i) Have each authorized employee apply a personal lockout/tags-plus system; or

(ii) Use a procedure that the employer can demonstrate affords each authorized employee a level of protection equivalent to the protection provided by having each authorized employee apply a personal lockout/tags-plus system. Such procedures shall incorporate a means for each authorized employee to have personal control of, and accountability for, his or her protection such as, but not limited to, having each authorized employee:

(A) Sign a group tag (or a group tag equivalent), attach a personal identification device to a group lockout device, or performs a comparable action before servicing is started; and

(B) Sign off the group tag (or the group tag equivalent), remove the personal identification device, or perform a comparable action when servicing is finished.

(12) Procedures for multiemployer worksites.

(a) The host employer shall establish and implement procedures to protect employees from hazardous energy in multiemployer worksites. The procedures shall specify the responsibilities for host and contract employers.

(b) Host employer responsibilities. The host employer shall carry out the following responsibilities in multiemployer worksites:

(i) Inform each contract employer about the content of the host employer's lockout/tags-plus program and procedures;

(ii) Instruct each contract employer to follow the host employer's lockout/tags-plus program and procedures; and

(iii) Ensure that the lockout/tags-plus coordinator knows about all servicing operations and communicates with each contract employer who performs servicing or works in an area where servicing is being conducted.

(c) Contract employer responsibilities. Each contract employer shall perform the following duties when working in a multiemployer worksite:

(i) Follow the host employer's lockout/tags-plus program and procedures;

(ii) Ensure that the host employer knows about the lockout/tags-plus hazards associated with the contract employer's work and what the contract employer is doing to address these hazards; and

(iii) Inform the host employer of any previously unidentified lockout/tags-plus hazards that the contract employer identifies at the multiemployer worksite.

**Note to subsection (12) of this section:** The host employer may include provisions in its contract with the contract employer for the contract employer to have more control over the lockout/tags-plus program if such provisions will provide an equivalent level of protection for the host employer's and contract employer's employees as provided by subsection (1) of this section.

(13) Procedures for shift or personnel changes.

(a) The employer shall establish and implement specific procedures for shift or personnel changes to ensure the continuity of lockout/tags-plus protection.

(b) The employer shall establish and implement provisions for the orderly transfer of lockout/tags-plus systems between authorized employees when they are starting and ending their workshifts, or when personnel changes occur during a workshift, to prevent energization or start-up of the machinery, equipment, or system being serviced or the release of hazardous energy.

(14) Lockout/tags-plus materials and hardware.

(a) The employer shall provide locks and tags-plus system hardware used for isolating, securing, or blocking machinery, equipment, or systems from all hazardous energy sources.

(b) The employer shall ensure that each lock and tag is uniquely identified for the purpose of controlling hazardous energy and is not used for any other purpose.

(c) The employer shall ensure that each lock and tag meets the following requirements:

(i) Durable.

(A) Each lock and tag is capable of withstanding the existing environmental conditions for the maximum period of time that servicing is expected to last;

(B) Each tag is made so that weather conditions, wet or damp conditions, corrosive substances, or other conditions in the work area where the tag is used or stored will not cause it to deteriorate or become illegible;

(ii) Standardized.

(A) Each lock and tag is standardized in at least one of the following areas: Color, shape, or size; and

(B) Each tag is standardized in print and format;

(iii) Substantial.

(A) Each lock is sturdy enough to prevent removal without the use of extra force or unusual techniques, such as bolt cutters or other metal-cutting tools;

(B) Each tag and tag attachment is sturdy enough to prevent inadvertent or accidental removal;

(C) Each tag attachment has the general design and basic safety characteristics of a one-piece, all environment-tolerant nylon tie;

(D) Each tag attachment is nonreusable, attachable by hand, selflocking, and nonreleasable, and has a minimum unlocking strength of fifty pounds;

(iv) Identifiable. Each lock and tag indicates the identity of the authorized employee applying it; and

(v) Each tag warns of hazardous conditions that could arise if the machinery, equipment, or system is energized and includes a legend such as one of the following: "Do Not Start," "Do Not Open," "Do Not Close," "Do Not Energize," or "Do Not Operate."

(15) Information and training.

(a) Initial training. The employer shall train each employee in the applicable requirements of this section no later than the effective date of this section.

(b) General training content. The employer shall train each employee who is, or may be, in an area where lockout/tags-plus systems are being used so they know:

(i) The purpose and function of the employer's lockout/tags-plus program and procedures;

(ii) The unique identity of the locks and tags to be used in the lockout/tags-plus system, as well as the standardized color, shape or size of these devices;

(iii) The basic components of the tags-plus system: An energy-isolating device with a tag affixed to it and an additional safety measure;

(iv) The prohibition against tampering with or removing any lockout/tags-plus system; and

(v) The prohibition against restarting or reenergizing any machinery, equipment, or system being serviced under a lockout/tags-plus system.

(c) Additional training requirements for affected employees. In addition to training affected employees in the requirements in (b) of this subsection, the employer also shall train each affected employee so he/she knows:

(i) The use of the employer's lockout/tags-plus program and procedures;

(ii) That affected employees are not to apply or remove any lockout/tags-plus system; and

(iii) That affected employees are not to bypass, ignore, or otherwise defeat any lockout/tags-plus system.

(d) Additional training requirements for authorized employees. In addition to training authorized employees in the requirements in (b) and (c) of this subsection, the employer also shall train each authorized employee so he/she knows:

(i) The steps necessary for the safe application, use, and removal of lockout/tags-plus systems to prevent energization or start-up or the release of hazardous energy during servicing of machinery, equipment, or systems;

(ii) The type of energy sources and the magnitude of the energy available at the worksite;

(iii) The means and methods necessary for effective isolation and control of hazardous energy;

(iv) The means for determining the safe exposure status of other employees in a group when the authorized employee is working as a group's primary authorized employee;

(v) The requirement for tags to be written so they are legible and understandable to all employees;

(vi) The requirement that tags and their means of attachment be made of materials that will withstand the environmental conditions encountered in the workplace;

(vii) The requirement that tags be securely attached to energy-isolating devices so they cannot be accidentally removed while servicing machinery, equipment, or systems;

(viii) That tags are warning devices, and alone do not provide physical barriers against energization or start-up, or the release of hazardous energy, provided by locks, and energy-isolating devices; and

(ix) That tags must be used in conjunction with an energy-isolating device to prevent energization or start-up or the release of hazardous energy.

(e) Additional training for lockout/tags-plus coordinator. In addition to training lockout/tags-plus coordinators in the requirements in (b), (c), and (d) of this subsection, the employer shall train each lockout/tags-plus coordinator so he/she knows:

(i) How to identify and isolate any machinery, equipment, or system that is being serviced; and

(ii) How to accurately document lockout/tags-plus systems and maintain the lockout/tags-plus log.

(f) Employee retraining.

(i) The employer shall retrain each employee, as applicable, whenever:

(A) There is a change in his/her job assignment that presents new hazards or requires a greater degree of knowledge about the employer's lockout/tags-plus program or procedures;

(B) There is a change in machinery, equipment, or systems to be serviced that presents a new energy-control hazard;

(C) There is a change in the employer's lockout/tags-plus program or procedures; or

(D) It is necessary to maintain the employee's proficiency.

(ii) The employer also shall retrain each employee, as applicable, whenever an incident investigation or program audit indicates that there are:

(A) Deviations from, or deficiencies in, the employer's lockout/tags-plus program or procedures; or

(B) Inadequacies in an employee's knowledge or use of the lockout/tags-plus program or procedures.

(iii) The employer shall ensure that retraining establishes the required employee knowledge and proficiency in the employer's lockout/tags-plus program and procedures and in any new or revised energy-control procedures.

(g) Upon completion of employee training, the employer shall keep a record that the employee accomplished the training, and that this training is current. The training record shall contain at least the employee's name, date of training, and the subject of the training.

(16) Incident investigation.

(a) The employer shall investigate each incident that resulted in, or could reasonably have resulted in, energization or start-up, or the release of hazardous energy, while servicing machinery, equipment, or systems.

(b) Promptly but not later than twenty-four hours following the incident, the employer shall initiate an incident investigation and notify each employee who was, or could reasonably have been, affected by the incident.

(c) The employer shall ensure that the incident investigation is conducted by at least one employee who has the knowledge of, and experience in, the employer's lockout/tags-plus program and procedures, and in investigating and analyzing incidents involving the release of hazardous energy. The employer may also use additional individuals to participate in investigating the incident.

(d) The employer shall ensure that the individual(s) conducting the investigation prepare(s) a written report of the investigation that includes:

(i) The date and time of the incident;

(ii) The date and time the incident investigation began;

(iii) Location of the incident;

(iv) A description of the incident;

(v) The factors that contributed to the incident;

(vi) A copy of any lockout/tags-plus log that was current at the time of the incident; and

(vii) Any corrective actions that need to be taken as a result of the incident.

(e) The employer shall review the written incident report with each employee whose job tasks are relevant to the incident investigation findings, including contract employees when applicable.

(f) The employer shall ensure that the incident investigation and written report are completed, and all corrective actions implemented, within thirty days following the incident.

(g) If the employer demonstrates that it is infeasible to implement all of the corrective actions within thirty days, the employer shall prepare a written abatement plan that contains an explanation of the circumstances causing the delay, a proposed timetable for the abatement, and a summary of the steps the employer is taking in the interim to protect employees from hazardous energy while servicing machinery, equipment, or systems.

(17) Program audits.

(a) The employer shall conduct an audit of the lockout/tags-plus program and procedures currently in use at least

annually to ensure that the procedures and the requirements of this section are being followed and to correct any deficiencies.

(b) The employer shall ensure that the audit is performed by:

(i) An authorized employee other than the one(s) currently using the energy control procedure being reviewed; or

(ii) Individuals other than an authorized employee who are knowledgeable about the employer's lockout/tags-plus program and procedures and the machinery, equipment, or systems being audited.

(c) The employer shall ensure that the audit includes:

(i) A review of the written lockout/tags-plus program and procedures;

(ii) A review of the current lockout/tags-plus log;

(iii) Verification of the accuracy of the lockout/tags-plus log;

(iv) A review of incident reports since the last audit;

(v) A review conducted between the auditor and authorized employees regarding the authorized employees' responsibilities under the lockout systems being audited; and

(vi) A review conducted between the auditor and affected and authorized employees regarding their responsibilities under the tags-plus systems being audited.

(d) The employer shall ensure that, within fifteen days after completion of the audit, the individual(s) who conducted the audit prepare and deliver to the employer a written audit report that includes at least:

(i) The date of the audit;

(ii) The identity of the individual(s) who performed the audit;

(iii) The identity of the procedure and machinery, equipment, or system that were audited;

(iv) The findings of the program audit and recommendations for correcting deviations or deficiencies identified during the audit;

(v) Any incident investigation reports since the previous audit; and

(vi) Descriptions of corrective actions the employer has taken in response to the findings and recommendations of any incident investigation reports prepared since the previous audit.

(e) The employer shall promptly communicate the findings and recommendations in the written audit report to each employee having a job task that may be affected by such findings and recommendations.

(f) The employer shall correct the deviations or inadequacies in the lockout/tags-plus program within fifteen days after receiving the written audit report.

(18) Recordkeeping.

(a) Table R-1 specifies what records the employer must retain and how long the employer must retain them:

**Table R-1**

**Retention of Records Required by WAC 296-304-06016**

<b>The employer must keep the following records</b>	<b>For at least</b>
Current lockout/tags-plus program and procedures	Until replaced by updated program and procedures
Training records	Until replaced by updated records for each type of training
Incident investigation reports	Until the next program audit is completed
Program audit report	12 months after being replaced by the next audit report

(b) The employer shall make all records required by this section available to employees, their representatives, and the director.

(19) Appendices. Nonmandatory Appendix A to this section is a guideline to assist employers and employees in complying with the requirements of this section, and to provide them with other useful information. The information in Appendix A does not add to, or in any way revise, the requirements of this section.

**Appendix A to WAC 296-304-06016 (Nonmandatory) - Typical minimal lockout/tags-plus procedures general lockout/tags-plus procedure.**

Lockout/tags-plus procedure for (name of company for single procedure or identification of machinery, equipment, or system if multiple procedures used).

**Purpose**

This procedure establishes the minimum requirements for the lockout/tags-plus application of energy-isolating devices on vessels and vessel sections, and for landside facilities whenever servicing is done on machinery, equipment, or systems in shipyards. This procedure shall be used to ensure that all potentially hazardous energy sources have been isolated and the machinery, equipment, or system to be serviced has been rendered inoperative through the use of lockout or tags-plus procedures before employees perform any servicing when the energization or start-up of the machinery, equipment, or system, or the release of hazardous energy could cause injury.

**Compliance with this program**

All employees are required to comply with the restrictions and limitations imposed on them during the use of lockout or tags-plus applications. Authorized employees are required to perform each lockout or tags-plus application in accordance with this procedure. No employee, upon observing that machinery, equipment, or systems are secured using lockout or tags-plus applications, shall attempt to start, open, close, energize, or operate that machinery, equipment, or system.

**Procedures for lockout/tags-plus systems**

(1) Notify each affected employee that servicing is required on the machinery, equipment, or system, and that it must be isolated and rendered inoperative using a lockout or tags-plus system.

(2) The authorized employee shall refer to shipyard employer's procedures to identify the type and magnitude of the energy source(s) that the machinery, equipment, or system uses, shall understand the hazards of the energy, and shall know the methods to control the energy source(s).

(3) If the machinery, equipment, or system is operating, shut it down in accordance with the written procedures (depress the stop button, open switch, close valve, etc.) established by the employer.

(4) Secure each energy-isolating device(s) through the use of a lockout or tags-plus system (for instance, disconnecting, blanking, and affixing tags) so that the energy source is isolated and the machinery, equipment, or system is rendered inoperative.

(5) Lockout system. Affix a lock to each energy-isolating device(s) with assigned individual lock(s) that will hold the energy isolating device(s) in a safe or off position. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

(6) Tags-plus system. Affix a tag to each energy-isolating device and provide at least one additional safety measure that clearly indicates that removal of the device from the safe or off position is prohibited. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

(7) Ensure that the machinery, equipment, or system is relieved, disconnected, restrained, or rendered safe from the release of all potentially hazardous energy by checking that no personnel are exposed, and then verifying the isolation of energy to the machine, equipment, or system by operating the push button or other normal operating control(s), or by testing to make certain it will not operate.

**CAUTION:** Return operating control(s) to the safe or off position after verifying the isolation of the machinery, equipment, or system.

(8) The machinery, equipment, or system is now secured by a lockout or tags-plus system, and servicing by the authorized person may be performed.

**Procedures for removal of lockout/tags-plus systems**

When servicing is complete and the machinery, equipment, or system is ready to return to normal operating condition, the following steps shall be taken:

(1) Notify each authorized and affected employee(s) that the lockout/tags-plus system will be removed and the machinery, equipment, or system reenergized.

(2) Inspect the work area to ensure that all employees have been safely positioned or removed.

(3) Inspect the machinery, equipment, or system and the immediate area around the machinery, equipment, or system to ensure that nonessential items have been removed and that the machinery, equipment, or system components are operationally intact.

(4) Reconnect the necessary components, remove the lockout/tags-plus material and hardware, and reenergize the

machinery, equipment, or system through the established detailed procedures determined by the employer.

(5) Notify all affected employees that servicing is complete and the machinery, equipment, or system is ready for testing or use.

#### NEW SECTION

**WAC 296-304-06017 Retention of DOT markings, placards, and labels.** (1) Any employer who receives a package of hazardous material that is required to be marked, labeled, or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180) shall retain those markings, labels, and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(2) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle, or transport vehicle until the hazardous materials are sufficiently removed to prevent any potential hazards.

(3) The employer shall maintain markings, placards, and labels in a manner that ensures that they are readily visible.

(4) For nonbulk packages that will not be reshipped, the requirements of this section are met if a label or other acceptable marking is affixed in accordance with chapter 296-839 WAC, Content and distribution of material safety data sheets (MSDSs) and label information.

(5) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as specified in the U.S. Department of Transportation Hazardous Materials Regulations.

#### NEW SECTION

**WAC 296-304-06018 Motor vehicle safety equipment, operation, and maintenance.** (1) Application.

(a) This section applies to any motor vehicle used to transport employees, materials, or property at worksites engaged in shipyard employment. This section does not apply to motor vehicle operation on public streets and highways.

(b) The requirements of this section apply to employer-provided motor vehicles. The requirements of subsections (2)(b) and (d) and (3)(b) of this section also apply to employee-provided motor vehicles.

(c) Only the requirements of subsection (2)(a) through (c) of this section apply to powered industrial trucks, as defined in chapter 296-863 WAC. The maintenance, inspection, operation, and training requirements in chapter 296-863 WAC continue to apply to powered industrial trucks used for shipyard employment.

(2) Motor vehicle safety equipment.

(a) The employer shall ensure that each motor vehicle acquired or initially used after the effective date of this rule is equipped with a safety belt for each employee operating or riding in the motor vehicle. This requirement does not apply

to any motor vehicle that was not equipped with safety belts at the time of manufacture.

(b) The employer shall ensure that each employee uses a safety belt, securely and tightly fastened, at all times while operating or riding in a motor vehicle.

(c) The employer shall ensure that vehicle safety equipment is not removed from any employer-provided vehicle. The employer shall replace safety equipment that is removed.

(d) The employer shall ensure that each motor vehicle used to transport an employee has firmly secured seats for each employee being transported and that all employees being transported are using such seats.

(3) Motor vehicle maintenance and operation.

(a) The employer shall ensure that each motor vehicle is maintained in a serviceable and safe operating condition, and removed from service if it is not in such condition.

(b) The employer shall ensure that, before a motor vehicle is operated, any tools and materials being transported are secured if their movements may create a hazard for employees.

(c) The employer shall implement measures to ensure that motor vehicle operators are able to see, and avoid harming, pedestrians and bicyclists at shipyards. Measures that employers may implement to comply with this requirement include:

(i) Establishing dedicated travel lanes for motor vehicles, bicyclists, and pedestrians;

(ii) Installing crosswalks and traffic control devices such as stop signs, mirrors at blind spots, or physical barriers to separate travel lanes;

(iii) Establishing appropriate speed limits for all motor vehicles;

(iv) Establishing "no drive" times to allow for safe movement of pedestrians;

(v) Providing reflective vests or other gear so pedestrians and bicyclists are clearly visible to motor vehicle operators;

(vi) Ensuring that bicycles have reflectors, lights, or other equipment to maximize visibility of the bicyclist; or

(vii) Other measures that the employer can demonstrate are as effective in protecting pedestrians and bicyclists as those measures specified in this section.

**Reference:** See chapter 296-864 WAC, Split (multi-piece) rim and single-piece rim wheels, for requirements relating to servicing multi-piece and single-piece rim wheels.

#### AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-10001 Ship's boilers. ((+))** Before work is performed in the fire, steam, or water spaces of a boiler where employees may be subject to injury from the direct escape of a high temperature medium, such as steam, or water, oil, or other medium at a high temperature entering from an interconnecting system, the employer shall insure that the following steps are taken:

((+)) (1) The isolation and shutoff valves connecting the dead boiler with the live system or systems shall be secured, blanked, and locked or tagged, in accordance with WAC 296-304-06016, indicating that employees are working in the boiler. This tag shall not be removed nor the valves unblanked until it is determined that this may be done without

creating a hazard to the employees working in the boiler, or until the work in the boiler is completed. Where valves are welded instead of bolted at least two isolation and shutoff valves connecting the dead boiler with the live system or systems shall be secured, locked and tagged.

~~((b))~~ (2) Drain connections to atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage.

~~((c))~~ (3) A warning sign calling attention to the fact that employees are working in the boilers shall be hung in a conspicuous location in the engine room. This sign shall not be removed until it is determined that the work is completed and all employees are out of the boilers.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

**WAC 296-304-10003 Ship's piping systems.** Before work is performed on a valve, fitting, or section of piping in a piping system where employees may be subject to injury from the direct escape of steam, or water, oil, or other medium at a high temperature, the employer shall insure that the following steps are taken:

(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and locked or tagged, in accordance with WAC 296-304-06016, indicating that employees are working on the systems. This tag shall not be removed nor the valves unblanked until it is determined that this may be done without creating a hazard to the employees working on the system, or until the work on the system is completed. Where valves are welded instead of bolted at least two isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, locked, and tagged.

(2) Drain connections to the atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

**WAC 296-304-10005 Ship's propulsion machinery.**

(1) Before work is performed on the main engine, reduction gear, or connecting accessories, the employer shall ensure that the following steps are taken:

(a) The jacking gear shall be engaged to prevent the main engine from turning over. A sign shall be posted at the throttle indicating that the jacking gear is engaged. This sign shall not be removed until the jacking gear can be safely disengaged.

(b) If the jacking gear is steam driven, the stop valves to the jacking gear shall be secured, locked, and tagged in accordance with WAC 296-304-06016, indicating that employees are working on the main engine.

(c) If the jacking gear is electrically driven, the circuit controlling the jacking gear shall be deenergized by tripping the circuit breaker, opening the switch or removing the fuse, whichever is appropriate. The breaker, switch, or fuse location shall be tagged indicating that employees are working on the main engine.

(2) Before the jacking engine is operated, the following precautions shall be taken:

(a) A check shall be made to ensure that all employees, equipment, and tools are clear of the engine, reduction gear, and its connecting accessories.

(b) A check shall be made to ensure that all employees, equipment and tools are free of the propeller.

(3) Before work is started on or in the immediate vicinity of the propeller, a warning sign calling attention to the fact that employees are working in that area shall be hung in a conspicuous location in the engine room. This sign shall not be removed until it is determined that the work is completed and all employees are free of the propeller.

(4) Before the main engine is turned over (e.g., when warming up before departure or testing after an overhaul) a check shall be made to ensure that all employees, equipment, and tools are free of the propeller.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

**WAC 296-304-120 Electrical machinery—Electrical circuits and distribution boards.** (1) Before an employee is permitted to work on an electrical circuit, except when the circuit must remain energized for testing and adjusting, the circuit shall be deenergized and checked at the point at which the work is to be done to insure that it is actually deenergized. When testing or adjusting an energized circuit a rubber mat, duck board, or other suitable insulation shall be used underfoot where an insulated deck does not exist.

(2) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall be locked out or tagged, in accordance with WAC 296-304-06016, to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed.

(3) When work is performed immediately adjacent to an open-front energized board or in back of an energized board, the board shall be covered or some other equally safe means shall be used to prevent contact with any of the energized parts.

**Note:** WAC 296-304-120 is applicable only to shipbuilding and ship repairing.

## WSR 12-12-065

### PERMANENT RULES

### LIQUOR CONTROL BOARD

[Filed June 5, 2012, 12:49 p.m., effective July 6, 2012]

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

Purpose: New permanent rules are needed to implement Initiative 1183 that passed on November 8, 2011. Parts of the initiative became effective on December 8, 2011. New license types were created and the state of Washington changed from a controlled liquor system to a privatized liquor system. Emergency rules were adopted on December 7, 2011, and on April 4, 2012, to clarify the language in the

new laws created in Initiative 1183. Permanent rules are needed to replace the emergency rules and further clarify the new laws.

Citation of Existing Rules Affected by this Order: Amending WAC 314-28-010, 314-28-050, 314-28-060, 314-28-070, 314-28-080, and 314-28-090.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, 66.24.640.

Adopted under notice filed as WSR 12-09-088 on April 18, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, 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 16, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 6, 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: May 30, 2012.

Sharon Foster  
Chairman

#### NEW SECTION

**WAC 314-02-103 What is a wine retailer reseller endorsement?** (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license to allow the sale of wine at retail to on-premises liquor licensees.

(2) No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) A grocery store licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars.

#### NEW SECTION

**WAC 314-02-104 Central warehousing.** (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

(3) Each licensee must allow the board access to the warehouse for audit and review of records.

(4) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

#### NEW SECTION

**WAC 314-02-106 What is a spirits retailer license?** (1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although



no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The annual fee for a spirits retail license is one hundred sixty-six dollars.

#### NEW SECTION

**WAC 314-02-107 What are the requirements for a spirits retail license?** (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

#### NEW SECTION

**WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?**

(1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

(a) On a form furnished by the board;

(b) Filed every quarter, including quarters with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** If a spirits retailer licensee does not submit its quarterly reports and payment to the board as required in subsection (1) of this section, the licensee is subject to penalties.

A penalty of two percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

### Chapter 314-23 WAC

#### SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES, AND SPIRITS IMPORTERS

#### NEW SECTION

**WAC 314-23-001 What does a spirits distributor license allow?** (1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; and

(d) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

#### NEW SECTION

**WAC 314-23-005 What are the fees for a spirits distributor license?** (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

(a) Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and

(b) Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the

fee is due for the third year of licensure and every year thereafter.

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.

(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

#### NEW SECTION

**WAC 314-23-020 What are the requirements for a spirits distributor license?** (1) In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

(a) A copy of all permits required by the federal government;

(b) Documentation showing the applicant has the right to the property;

(c) An acknowledgment form certifying the applicant has a security plan which addresses:

(i) Inventory management; and

(ii) Physical security of spirits product with respect to preventing theft.

(2) Spirits distributors must sell and deliver product from their licensed premises.

#### NEW SECTION

**WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?** (1) A **spirits distributor** must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

#### NEW SECTION

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) If a spirits distributor licensee does not submit its monthly reports and payment to the board as required in WAC 314-23-021(1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day

of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

#### NEW SECTION

**WAC 314-23-030 What does a spirits certificate of approval license allow?** (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to distributors or importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(3) A certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

#### NEW SECTION

**WAC 314-23-040 What are the requirements for a certificate of approval license?** The following documents are required to obtain a certificate of approval license:

(1) Copies of all permits required by the federal government;

(2) Copies of all state licenses and permits required by the state in which your operation is located; and

(3) Licensing documents as determined by the board.

NEW SECTION

**WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee?** (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

NEW SECTION

**WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late?** (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

NEW SECTION

**WAC 314-23-050 What does a spirits importer license allow?** (1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

(a) Import spirits into the state of Washington;

(b) Store spirits in the state of Washington;

(c) Sell spirits to spirits distributors; and

(d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-010 Records.** (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) ~~((Must))~~ Keep records ~~((concerning))~~ regarding any spirits, whether produced or purchased, for three years after each sale. A distiller ~~((may be))~~ is required to report on forms approved by the board;

(b) ~~((Must))~~ In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; ~~((and))~~

(c) ~~((Must))~~ Submit duplicate copies of transcripts, notices, or other data that ~~((are))~~ is required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records ~~((, in the case))~~ of retail sales to consumers; and

(b) Submit ~~((duplicate copies of))~~ its monthly ~~((returns))~~ records to the board upon request.

NEW SECTION

**WAC 314-28-030 Changes to the distiller and craft distiller license.** (1) Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.

(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-050 What does a craft distillery license allow?** (1) A craft distillery license allows a licensee to:

(a) Produce sixty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) ~~((Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special ordered by an individual Washington state liquor store))~~ For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits distributor;

(d) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits retailer in the state of Washington;

~~((and))~~ (e) Sell to out-of-state entities;

~~((and))~~ (f) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

~~((f))~~ (g) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

~~((g))~~ (h) Contract ~~((produced))~~ produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors until March 1, 2012.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-060 What are the general requirements for a craft distillery license?** Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board;

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington(;

~~(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;~~

~~(5) Purchase any spirits used for sampling at the distillery premises from the board; and~~

~~(6) Purchase any spirits used for samples provided to retailers from the board).~~

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license?** (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board ~~((or in a format approved by the board));~~

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the dis-

tiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

~~(3) ((Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge.))~~ On sales on or after March 1, 2012, a distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

~~(a) ((Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.))~~ On sales after June 1, 2012, a distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

~~(b) ((Samples provided to retailers are considered sales reportable to the board.~~

~~(e))~~ Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?** If a distillery or craft distiller ~~((fails to))~~ does not submit its monthly reports ~~((or))~~ and payment to the board ~~((; or submits late, then))~~ as required in WAC 314-28-070(1), the licensee is subject to penalties ~~((and surety bonds)).~~

~~((f))~~ Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

~~((2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:~~

~~(a) Must be on a surety bond form and in an amount acceptable to the board;~~

~~(b) Payable to the "Washington state liquor control board"; and~~

~~(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.~~

~~(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-~~

one days after a notification by mail, if any of the following occur:

(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;

(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or

(c) Return of payment for nonsufficient funds.

(4) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.

(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.

(6) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.

(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.)

**AMENDATORY SECTION** (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-090 Distilleries or craft distilleries((— Selling in state, retail pricing and product listing))— Selling out-of-state((— Special orders)). ((1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?**

(a) There are two ways to sell a spirits product at a state liquor store:

(i) Through the special order process; and

(ii) Through product listing.

(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

(c) Before a craft distillery licensee may sell its product to a customer (twenty-one years old or older) at its distillery premises, a licensee must;

(i) Obtain a retail price from the board;

(ii) Sell its product to the board; and

(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

(d) *Listing a product.* A craft distillery licensee must submit a formal request to the board to have the board regu-

larly stock its product at a state liquor store. The board's purchasing division administers the listing process.

(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).

(e) *Obtaining a retail price.* A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

**(2)) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

((a)) (1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

((b)) (2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

((c)) (3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

((d) Product sold out-of-state is not subject to retail pricing by the board.

((e)) (4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

## WSR 12-12-070

### PERMANENT RULES

### SECRETARY OF STATE

[Filed June 5, 2012, 3:40 p.m., effective July 6, 2012]

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

Purpose: Updating references and creating consistency between state and federal standards.

Citation of Existing Rules Affected by this Order: Amending WAC 434-180-360.

Statutory Authority for Adoption: RCW 19.34.030.

Adopted under notice filed as WSR 12-09-029 on April 10, 2012.

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

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

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

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

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

Date Adopted: May 29, 2012.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 99-02-047, filed 1/4/99, effective 2/4/99)

**WAC 434-180-360 Trustworthy system.** A system shall be regarded as trustworthy if it materially satisfies ~~((the Common Criteria (CC) Protection Profile (PP) for Commercial Security 2 (CS2), (CCPPCS);))~~ current information security standards and guidelines, including minimum requirements for federal information systems, developed by the National Institute of Standards and Technology (NIST). ~~((The determination whether a departure from CCPPCS is material shall be governed by WAC 434-180-240(2).))~~ For purposes of this chapter, ~~((CCPPCS))~~ compliance shall be interpreted in a manner that is reasonable in the context in which a system is used and is consistent with other state and federal laws. ~~((Until such time as the referenced standard is adopted by NIST, the standard applicable for purposes of this chapter shall be the draft of CCPPCS dated July 13, 1998.))~~