

**WSR 12-16-087**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 31, 2012, 3:34 p.m., effective August 31, 2012]

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

Purpose: The department amended these rules to comply with and to be consistent with Initiative 1163, ESHB 1277 as codified in chapter 70.128 RCW and ESHB 2314. In addition to implementing Initiative 1163, ESHB 1277 and 2314, the department clarified the provision related to disqualifying crimes related to drugs. The department added WAC 388-76-101631 Background checks—Process—Washington state name and date of birth background check, 388-76-101632 Background checks—Process—National fingerprint background check, 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access, 388-76-10176 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check, and 388-76-10181 Background checks—Employment—Nondisqualifying information.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10162; and amending WAC 388-76-10025, 388-76-10120, 388-76-10146, 388-76-10160, 388-76-10161, 388-76-10163, 388-76-10164, 388-76-10165, 388-76-10175, 388-76-10180, 388-76-10200, and 388-76-10955.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 12-09-071 on April 17, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-76-10146 Qualifications—Training and home care aide certification.

(3) All persons listed in subsection ~~(1)~~ (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 WAC or 388-112 WAC.

(4) All adult family home applicants on or after January 7, 2012, Even if an adult family home applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home-care aide certification if required by chapter 246-980 WAC. requirements under chapter 388-112 WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.

(5) Under RCW 18.88B.040~~1~~ and chapter 246-980 WAC, certain ~~persons~~ individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant programs, are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to continuing education; these individuals must comply with continuing education requirements still apply as outlined in under chapter 388-112 WAC.

WAC 388-76-101631 Background checks—~~Process~~ Washington state name and date of birth background check. ~~(1) Before receiving the results of the Washington state name~~

~~and date of birth background check, the adult family home may conditionally employ, directly or by contract, a caregiver, entity representative or resident manager as provided in WAC 388-76-10175.~~

(2) After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(a~~1~~) Not employ, directly or by contract, a caregiver, entity representative or resident manager convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180.

(b~~2~~) Not allow a household member over the age of eleven, volunteer, student or noncaregiving staff to have unsupervised access to residents if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180.

WAC 388-76-101632 Background checks—~~Process~~ National fingerprint background check. (1) Individuals specified in WAC 388-76-10161(2) who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

~~(2) Before receiving the results of the national fingerprint background check, the adult family home may provisionally employ, directly or by contract, a caregiver, entity representative or resident manager as provided in WAC 388-76-10176.~~

(3~~2~~) After receiving the results of the national fingerprint background check the adult family home must not employ, directly or by contract, a caregiver, entity representative or resident manager who has been convicted of a disqualifying crime or who has a disqualifying finding under WAC 388-76-10180.

(4~~3~~) The provider may accept a copy of a national fingerprint background check result letter and any additional information from the department's background check central unit ~~(BCCU)~~ from an individual who previously completed a national fingerprint background check through the background check central unit BCCU, provided the national fingerprint background check was completed after January 7, 2012.

WAC 388-76-10180 Background checks—~~Employment—Disqualifying information. Except as provided in WAC 388-76-10175 and 388-76-10176,~~ The adult family home must not employ anyone, directly or by contract, who is listed in WAC 388-76-10161(2) if the individual has any of the convictions, history, or findings, described below:

(1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(2) Has been convicted of a crime in any federal or state court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (e~~3~~), (d~~4~~), (e~~5~~), (f~~6~~), or (g~~7~~), below;

(3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prosti-

tution and more than three years ~~has~~ have passed since conviction;

(4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years ~~has~~ have passed since conviction;

(5) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substances Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (VUCSA);

(c) Violation of the Uniform Legend Drug Act (VULDA); or

(d) Violation of the Uniform Precursor Drug Act (VUPDA).

(6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(7) Has been convicted of criminal mistreatment;

(8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(9) Has a finding of abuse or neglect of a child that is:

(a) Listed on the department's background check central unit report (~~BCCU~~); or

(b) Disclosed by the individual, except for findings made before December, 1998.

(10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit report (~~BCCU~~); or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(11) Pending the results of the background checks, conditional or provisional hiring may be allowed under WAC 388-76-10175 and WAC 388-76-10176.

WAC 388-76-10181 Background checks—Employment—Nondisqualifying information. (1) If any background check results show that an employee or prospective employee has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

The changes were made because:

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-76-10146 (3) Clarification is needed for references on home-care aide certification requirements.	The department has accepted this comment and clarified the references.
(4) Clarification is needed on what long-term care worker training and certification requirements apply to adult family home applicants.	The department has accepted this comment and clarified that applicants will have the same requirements around training and certification as long-term care workers.
(5) Clarification is needed that individuals who may be exempt from the home-care aide certification and long-term care worker training requirements, still need to comply with continuing education requirements.	The department has accepted this comment and clarified that continuing education requirements still apply to these individuals.
WAC 388-76-101631 and 388-76-101632 Suggest conditional and provisional language be deleted since it is duplicative and already in other WAC sections.	The department has accepted this comment and deleted WAC 388-76-101631(1) and 388-76-101632(2) since it is already covered in WAC 388-76-10175 and 388-76-10176.
WAC 388-76-10180 Suggest deleting the introductory phrase since the adult family home cannot hire anyone with these convictions if they have knowledge about it.	The department has accepted this comment and deleted the introductory phrase. The department has also added a new subsection (11) to clarify that pending the results of the background checks, conditional and provisional hiring may still be allowed under the relevant WAC sections.
WAC 388-76-10181 (1)(b) Documentation in writing for the basis of the decision needs to be kept in a consistent place.	The department has accepted this comment and clarified that the documented decision needs to be made available to the department upon request.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, 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 12, Repealed 1.

Date Adopted: July 30, 2012.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

**WAC 388-76-10025 License annual fee.** (1) The adult family home must pay ~~((an annual))~~ the license fee ((as) that is established in the state's ((omnibus appropriations act and any amendment or additions made to that act)) operating budget, as described in RCW 70.128.060.

(2) ~~((The home must send))~~ Each year, the home's annual license fee ((to the department upon receipt of notice of fee due)) is due during the same month in which the home was initially licensed. For example, if the home was licensed in June, 2010, then the annual licensing fee will be due in June of each year.

(3) ~~((#))~~ The home must ensure that the department receives the annual license fee when it is due.

(4) If the home does not pay the fee when it is due, the department will impose remedies.

**AMENDATORY SECTION** (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

**WAC 388-76-10120 License—Must be denied.** The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class except as provided in WAC 388-76-10064.

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice ~~((that))~~ of the department's ((intended to deny, suspend, not renew or revoke)) initiation of a denial, suspension, nonrenewal or revocation of the license.

(3) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has been convicted of a crime in any federal or state court ~~((or in any other state))~~, and the department determines that the crime is equivalent to a crime under subsections (3)~~((e))~~ (d), (e), (f), ~~((e))~~ (g) or (h), below;

(d) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years ~~((has))~~ have passed since conviction;

(e) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years ~~((has))~~ have passed since conviction;

(f) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:

(i) Violation of the Imitation Controlled Substance Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (VUCSA);

(iii) Violation of the Uniform Legend Drug Act (VULDA); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

(g) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(h) Has been convicted of criminal mistreatment;

(i) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(j) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit ~~((BCCU))~~ report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(k) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit ~~((BCCU))~~ report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

**WAC 388-76-10146 Qualifications—Training and home care aide certification.** (1) The adult family home must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 7, 2012, meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) All persons listed in subsection ~~((4))~~ (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 or 388-112 WAC.

(4) ~~((A))~~ Even if an adult family home (applicant on or after January 7, 2012,) applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training (requirements of chapter 388-112 WAC) and (obtain the) home-care aide certification (if required by chapter 246-980 WAC) requirements under chapter 388-112 WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.

(5) Under RCW ~~((48.88B.040))~~ 18.88B.041 and chapter 246-980 WAC, certain ~~((persons))~~ individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant programs, are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to continuing education; these individuals must comply with continuing education requirements (still apply as outlined in) under chapter 388-112 WAC.

(6) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

~~((7))~~ The adult family home must ensure that a qualified caregiver is on-site whenever a resident is at the adult family home. For purposes of this subsection, a qualified caregiver means someone who has successfully completed orientation and basic training.)

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10160 Background checks—General.** (1) Background checks conducted by the department and required in this chapter include but are not limited to:

~~((1))~~ (a) Washington state name and date of birth background checks (including:

~~(a) Department and department of health findings; and~~

~~(b) Criminal background check information from the Washington state patrol and the Washington state courts;); and~~

~~((2))~~ (b) After (January 1, 2012)) January 7, 2012, a national fingerprint((based)) background check in accordance with RCW ((74.39A.055)) 74.39A.056.

~~((3))~~ (2) Nothing in this ((section)) chapter should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

~~((4))~~ (3) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW ((74.39A.050(8))) 74.39A.051.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10161 Background checks—((Washington state—)) Who is required to have.** (1) An adult family home applicant and anyone affiliated with an applicant must have ~~((a Washington state))~~ the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) If applying after January 7, 2012, a national fingerprint background check.

(2) The adult family home must ensure ~~((the following individuals))~~ that all caregivers, entity representatives, and resident managers who are employed directly or by contract after January 7, 2012, have ((Washington state)) the following background checks:

(a) ((Caregivers, including volunteers and students who may have unsupervised access to residents)) A Washington state name and date of birth background check; and

(b) ((Entity representatives;

(c) Resident managers; and

(d) All household members over the age of eleven who may have unsupervised access to residents)) A national fingerprint background check.

(3) All household members over the age of eleven, volunteers, students, and noncaregiving staff who may have unsupervised access to residents must have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10163 Background checks—Process—Background authorization form.** Before the adult family home employs, directly or by contract, a resident manager, entity representative ~~((or))~~, caregiver, or noncaregiving staff, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) Send the completed form to the department's background check central unit ~~((BCCU))~~, including any additional documentation and information requested by the department.

NEW SECTION

**WAC 388-76-101631 Background checks—Washington state name and date of birth background check.** After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(1) Not employ, directly or by contract, a caregiver, entity representative or resident manager convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180.

(2) Not allow a household member over the age of eleven, volunteer, student or noncaregiving staff to have unsupervised access to residents if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180.

NEW SECTION

**WAC 388-76-101632 Background checks—National fingerprint background check.** (1) Individuals specified in WAC 388-76-10161(2) who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the adult family home must not employ, directly or by contract, a caregiver, entity representative or resident manager who has been convicted of a disqualifying crime or who has a disqualifying finding under WAC 388-76-10180.

(3) The provider may accept a copy of a national fingerprint background check result letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint background check through the background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10164 Background checks—Results.**

~~(1) ((The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3))~~ After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(a) Inform the person of the results of the background checks;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the

background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(2) After receiving a copy of the results of the national fingerprint background check, the adult family home must:

(a) Inform the person of the results of the background check; and

(b) Inform the person that they may request a copy of the results of the national fingerprint background check result letter and that any additional information can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10165 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely.** (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The adult family home must ensure:

~~((1))~~ (a) A new DSHS background authorization form is submitted to the ((BCCU)) department's background check central unit every two years for each individual((s)) listed in WAC 388-76-10161;

~~((2))~~ (b) There is a valid Washington state background check for all individuals listed in WAC 388-76-10161.

(2) A national fingerprint background check is valid for an indefinite period of time. The adult family home must ensure there is a valid national fingerprint background check for individuals hired after January 7, 2012 as caregivers, entity representatives or resident managers. To be considered valid, the individual must have completed the national fingerprint background check through the background check central unit after January 7, 2012.

NEW SECTION

**WAC 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access.** (1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department verifying that the person does not have convictions or findings described in WAC 388-76-10180.

(2) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must:

(a) Determine whether or not the person has the character, competence and suitability to have unsupervised access to residents; and

(b) Document in writing the basis for making the decision.

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

**AMENDATORY SECTION** (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

- (1) ~~((Requests))~~ Submits the Washington state name and date of birth background check no later than one business day after conditional employment;
- (2) Requires the individual to sign a disclosure statement and the individual denies having been convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180;
- (3) Does not allow the individual to have unsupervised access to any resident;
- (4) Ensures direct supervision, ~~((of the individual,))~~ as defined in WAC 388-76-10000, of the individual; and
- (5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

**NEW SECTION**

**WAC 388-76-10176 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check.** The adult family home may provisionally employ individuals hired after January 7, 2012 and listed in WAC 388-76-10161(2) for one hundred twenty-days and allow those individuals to have unsupervised access to residents when:

- (1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and
- (2) The results of the national fingerprint background check are pending.

**AMENDATORY SECTION** (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10180 Background checks—Employment—Disqualifying information.** ~~((Unless hired conditionally as specified in WAC 388-76-10175,))~~ The adult family home must not ~~((use or))~~ employ anyone, directly or by contract, who is listed in WAC 388-76-10161(2) if the individual has~~((=~~

~~((+))~~ any of the convictions, history, or findings, described below:

- ~~((+))~~ (1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;
- ~~((+))~~ (2) Has been convicted of a crime in any federal or state court ~~((or in any other state))~~, and the department determines that the crime is equivalent to a crime under sub-

sections ~~((e), (d), (e), (f), or (g)))~~ (3), (4), (5), (6), or (7), below;

~~((+))~~ (3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years ~~((has))~~ have passed since conviction;

~~((+))~~ (4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years ~~((has))~~ have passed since conviction;

~~((+))~~ (5) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs under one of the following laws:

- ~~((+))~~ (a) Violation of the Imitation Controlled Substance~~((s))~~ Act (VICSA);
- ~~((+))~~ (b) Violation of the Uniform Controlled Substances Act (VUCSA);
- ~~((+))~~ (c) Violation of the Uniform Legend Drug Act (VULDA); or
- ~~((+))~~ (d) Violation of the Uniform Precursor Drug Act (VUPDA).

~~((+))~~ (6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

~~((+))~~ (7) Has been convicted of criminal mistreatment;

~~((+))~~ (8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

~~((+))~~ (9) Has a finding of abuse or neglect of a child that is:

- ~~((+))~~ (a) Listed on the department's background check central unit ~~((BCCU))~~ report; or
- ~~((+))~~ (b) Disclosed by the individual, except for findings made before December, 1998.

~~((+))~~ (10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

- ~~((+))~~ (a) Listed on any registry, including the department's registry;
- ~~((+))~~ (b) Listed on the department's background check central unit ~~((BCCU))~~ report; or
- ~~((+))~~ (c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

~~((2))~~ ~~Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.)~~

(11) Pending the results of the background checks, conditional or provisional hiring may be allowed under WAC 388-76-10175 and WAC 388-76-10176.

NEW SECTION

**WAC 388-76-10181 Background checks—Employment—Nondisqualifying information.** (1) If any background check results show that an employee or prospective employee has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

**WAC 388-76-10200 Adult family home—Staff—Availability—Contact information.** In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one qualified caregiver is present in the home whenever one or more residents are present in the home (~~(, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan)), except as provided in subsection (2). For purpose of this subsection, a qualified caregiver means someone who has completed orientation and basic training as required by chapter 388-112 WAC;~~

(2) Ensure that before the adult family home leaves a resident unattended:

(a) That the adult family home determines that the resident can be left unattended safely, based upon an assessment that identifies the resident's strengths and needs;

(b) The resident knows what to do in an emergency and is able to successfully act on that knowledge; such as leaving the home or calling 911, when necessary;

(c) The adult family home individualizes each resident's negotiated care plan to the resident's identified strengths and needs and includes a limited and specific amount of time the resident is safe to be left unattended;

(d) The resident consents to the plan to be left unattended; and

(e) The resident is able to contact a responsible staff person at all times.

(3) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.

~~((3))~~ (4) Give residents the telephone or pager number for the contact required in subsection (2) of this section;

~~((4))~~ (5) Ensure the provider, entity representative or resident manager is readily available to:

- (a) Each resident;
- (b) Residents' representatives;
- (c) Caregivers; and
- (d) Authorized state staff.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10955 Remedies—Department must impose remedies.** (1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years (~~has~~) have passed since conviction;

(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years (~~has~~) have passed since conviction;

(d) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:

(i) Violation of the Imitation Controlled Substance(~~s~~) Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (VUCSA);

(iii) Violation of the Uniform Legend Drug Act (VULDA); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

(e) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(f) Has been convicted of criminal mistreatment;

(g) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

(h) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (~~(BCCU))~~ report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(i) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

- (i) Listed on any registry, including the department's registry;
- (ii) Listed on the department's background check central unit (~~((BCCU))~~) report; or
- (iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.
- (j) Has been convicted of a crime in any federal or state court (~~(or in the court of any other state)~~), and the department determines that the conviction is equivalent to a conviction under subsection (3)(b), (c), (d), (e) or (f) above.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check— National fingerprint checks—Who is required to have.
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**WSR 12-17-006**  
**PERMANENT RULES**  
**LIQUOR CONTROL BOARD**

[Filed August 1, 2012, 12:34 p.m., effective September 1, 2012]

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

Purpose: Current rules need to be revised and/or repealed to implement sections of Initiative 1183 that passed on November 8, 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-13-025, 314-13-030, 314-13-040, 314-36-010, 314-36-020, 314-37-010, 314-37-020, 314-37-030, 314-64-010, 314-64-020, 314-64-040, 314-64-050, 314-76-015, 314-76-020, 314-76-025, 314-76-030 and 314-76-035; and amending WAC 314-05-020, 314-05-030, 314-11-025, 314-11-040, 314-11-085, 314-11-097, 314-11-100, 314-11-105, 314-11-110, 314-13-010, 314-13-015, 314-13-020, 314-24-040, 314-24-070, 314-24-160, 314-24-180, 314-24-190, 314-27-010, 314-30-010, 314-36-040, 314-36-060, 314-36-080, 314-36-090, 314-36-100, 314-36-130, 314-38-010, 314-38-050, 314-42-010, 314-44-005, 314-45-010, and 314-64-08001.

Statutory Authority for Adoption: RCW 66.08.030, 66.08.050.

Adopted under notice filed as WSR 12-11-009 on May 3, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-52-110 is not included. No revisions will be made to the current rule.

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 31, Repealed 17.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 31, Repealed 17.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 31, Repealed 17.

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

Date Adopted: August 1, 2012.

Sharon Foster  
Chairman

**AMENDATORY SECTION** (Amending WSR 09-02-013, filed 12/29/08, effective 1/29/09)

**WAC 314-05-020 What is a special occasion license?**

(1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; and

(b) Spirits, beer and wine in original, unopened containers for off-premises consumption.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is \$60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.

**AMENDATORY SECTION** (Amending WSR 11-23-046, filed 11/9/11, effective 12/10/11)

**WAC 314-05-030 Guidelines for special occasion license events.** (1) The special occasion license must be posted at the event.

(2) Special occasion licensees may get alcohol for the event only from the following sources:

(a) Spirits (~~((must be purchased from a Washington state-run or contract liquor store;~~

~~((b)))~~, beer, and wine must be purchased at retail from a licensed retailer((:)); from a spirits, beer, or wine distributor((:)); from a distiller, a craft distiller, a domestic brewery, microbrewery, or winery((:)) acting as a distributor of its own product((:)); or from a certificate of approval holder with a direct shipping to Washington retailer endorsement. Special occasion licensees are allowed to pay for beer or wine used



for the special occasion event immediately following the end of the special occasion event; and

~~((e))~~ (b) Per RCW 66.28.040, in state breweries and wineries, out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer, wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations. ~~((Spirits donated to a special occasion licensee must be purchased from a state or contract liquor store.))~~

(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.

(4) Per RCW ~~((66.28.040))~~ 66.28.310, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.

(a) Wineries and distilleries may pour at any special occasion event.

(b) Wineries or breweries that are participating in a special occasion event may pay reasonable booth fees to the special occasion licensee. Booth fees must be uniform for all participating wineries and breweries.

(5) Per RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated location(s).

(6) If a special occasion license function is held at an establishment that has a liquor license:

(a) The special occasion function must be held in an area of the premises separate from areas open to the general public during the time the special occasion function is occurring, and the licensed premises' liquor cannot be sold or served in the same area(s) as the special occasion license function.

(b) The liquor licensee cannot charge for the liquor purchased by the special occasion licensee for service at the special occasion event, but can charge for room usage, services, etc. The liquor licensee must sign the special occasion application giving permission for the special occasion licensee to bring and sell their alcohol at the liquor licensed premises.

(c) The special occasion license will not be issued for use at premises whose liquor license will be suspended on the date(s) of the scheduled event.

**AMENDATORY SECTION** (Amending WSR 08-03-081, filed 1/16/08, effective 2/16/08)

**WAC 314-11-025 What are the forms of acceptable identification?** (1) ~~((Per RCW 66.16.040,))~~ Following are the forms of identification that are acceptable to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the person's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

**AMENDATORY SECTION** (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

**WAC 314-11-040 What duties can an employee under twenty-one years of age perform on a licensed premises?** A person must be twenty-one years of age or older to be employed in the sale, handling, or service of liquor, except as provided in this chapter.

(1) Per RCW 66.44.340 and RCW 66.44.350, persons between eighteen and twenty-one years of age may perform the following duties:

	<b>Duties 18, 19, and 20 year old employees may perform, as long as there is a person twenty-one years of age or older on duty supervising the sale of liquor</b>	<b>Duties 18, 19, and 20 years old employees may not perform</b>
(a) In a grocery store or beer/wine specialty shop:	<ul style="list-style-type: none"> <li>■ Sell, stock, and handle beer and wine; and</li> <li>■ Deliver beer and/or wine to a customer's car with the customer (for the purposes of this rule, there is no minimum age requirement for an employee of a grocery store or a beer/wine specialty shop to deliver beer and/or wine to a customer's car with the customer).</li> </ul>	Supervise employees who sell, stock, or handle beer and/or wine.
(b) In a spirits retail business:	<ul style="list-style-type: none"> <li>■ <u>As long as there are at least two supervisors at least twenty-one years of age on duty, persons 18, 19, and 20 years old may sell, stock, and handle spirits.</u></li> <li>■ <u>Deliver spirits to a customer's car with the customer (for purposes of this rule, there is no minimum age requirement for an employee of a spirits retailer to deliver spirits to a customer's car with the customer).</u></li> </ul>	<u>Supervise employees who sell, stock, or handle spirits.</u>

	<b>Duties 18, 19, and 20 year old employees may perform, as long as there is a person twenty-one years of age or older on duty supervising the sale of liquor</b>	<b>Duties 18, 19, and 20 years old employees may not perform</b>
<del>((b))</del> (c) In an establishment that sells liquor for on-premises consumption:	<ul style="list-style-type: none"> <li>Take orders for, serve, and sell liquor in areas classified as open to persons under twenty-one years of age; and</li> </ul>	Functions of a bartender, including:
	<ul style="list-style-type: none"> <li>Enter areas designated as off-limits to persons under twenty-one years of age to perform duties such as picking up liquor for service in other parts of the establishment; cleaning up, setting up, and arranging tables; delivering messages; serving food; and seating patrons; provided the employee does not remain in the area any longer than is necessary to perform the duties.</li> </ul>	<ul style="list-style-type: none"> <li>Mixing drinks;</li> <li>Drawing beer or wine from a tap;</li> <li>Pouring beer or wine anywhere except at the patrons table; and</li> <li>Providing an employee spirits, beer by the pitcher or glass, or wine by the carafe or glass for delivery to a customer.</li> </ul>
(d) In a spirits retail business:		Supervise employees who sell, stock, or handle spirits.

(2) Per RCW 66.44.316 and 66.44.318, the following persons that are eighteen, nineteen, or twenty years of age may remain on licensed premises or portions of premises that are restricted from persons under twenty-one years of age, but only during the course of his or her employment:

- (a) Persons performing janitorial services during the hours when there is no sale, service, or consumption of liquor on the premises;
- (b) Employees of amusement device companies for the purpose of installing, maintaining, repairing, or removing any amusement device;
- (c) Security or law enforcement officers and firefighters during the course of their official duties and if they are not the direct employees of the licensee; and
- (d) Professional musicians, per WAC 314-11-045.

**AMENDATORY SECTION** (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

**WAC 314-11-085 Do I have to sell liquor at a certain price?** (1) ~~((Retail))~~ Liquor licensees must sell beer, wine, and spirits ~~((to customers))~~ at or above the licensee's acquisition cost.

(2) An exception to this requirement is that on-premises retail licensees may give a customer a drink free of charge under limited circumstances, such as a customer's birthday or to compensate for unsatisfactory products or services. Free liquor may not be used in advertising or as part of a promotion.

**AMENDATORY SECTION** (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-11-097 Credit on nonliquor food items—Conditions—Recordkeeping.** (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products ~~((to ensure that such persons are in compliance with RCW 66.28.010)).~~

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.

**AMENDATORY SECTION** (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

**WAC 314-11-100 Can the board or another government agency seize liquor?** Under the provisions of RCW 66.08.030 ~~((z))~~ (20), liquor enforcement officers and other peace officers are authorized to seize, confiscate, destroy or otherwise dispose of any liquor that is manufactured, sold, or offered for sale within the state in violation of the provisions of Title 66 RCW and/or Title 314 WAC.

**AMENDATORY SECTION** (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

**WAC 314-11-105 What can the board do with lawfully seized liquor?** (1) Per RCW 66.08.030 ~~((z))~~ (20) and chapter 66.32 RCW, the board may destroy lawfully seized liquor under the following conditions:

- (a) The board must maintain a record of the type, brand, and amount of liquor seized for at least one year.
- (b) The lawfully seized liquor may be destroyed only after:
  - (i) The board's charges of a violation of Title 66 RCW or board regulations have been sustained after an administrative proceeding pursuant to chapter 314-29 WAC as now or hereafter amended, in which the liquor to be destroyed has been the subject of, or evidence in, the administrative proceeding; or
  - (ii) The board's charges of a violation of Title 66 RCW or board regulations have been admitted or are not contested by the person from whom the liquor was seized and the liquor seized was the subject of the charged violation; or

(iii) The liquor was seized pursuant to lawful arrest and liquor was held as evidence in a criminal proceeding where a final disposition has been reached; or

(iv) When no administrative or judicial proceedings are held, all parties who claim a right, title, or interest in the seized liquor have been given notice and opportunity for a hearing to determine his or her right, title, or interest in the subject liquor. Claims of right, title, or interest in seized liquor must be made to the board, in writing, within thirty days of the date of seizure.

(2) If the liquor lawfully seized is in its original, sealed container, the board may either:

(a) ~~((Return the product to a state liquor store for discounted resale;))~~ Sell the unopened beer, wine, or spirits to the distributor selling the product at a negotiated price. The bill of sale must be kept for three years; or

(b) Upon written request from a law enforcement agency, provide the liquor to the law enforcement agency for bona fide training.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

**WAC 314-11-110 What can government agencies other than the board do with lawfully seized liquor?**

Under the provisions of chapter 66.32 RCW, government agencies may, after obtaining the approval of the board and under the supervision of the board, dispose of lawfully seized liquor as follows:

(1) ~~((The government agency may sell unopened, salable spirituous liquor, beer, and wine that was purchased from the board to the board under the following conditions:~~

(a) ~~The government agency must provide the board with a listing of the liquor and make the liquor available for examination and review;~~

(b) ~~The board will issue a purchase order for the liquor;~~

(c) ~~When the government agency is from within the state of Washington and the liquor was originally purchased from the board, the board will pay the licensee price listed in the official board price list then in effect, less a handling charge of 13.5 percent.~~

(d) ~~When the government agency is a federal agency, or when the government agency is from within the state of Washington but the liquor was not originally purchased from the board, or the liquor is no longer handled by the board, the board will pay a negotiated amount not to exceed ninety percent of the original approximate cost price from the distillery or manufacturer including federal tax and duty; and~~

(e) ~~After receipt of the board purchase order, the government agency that is selling the liquor will invoice the board per the prices listed on the purchase order.~~

(2) ~~The government agency may sell opened containers of lawfully seized liquor back to the spirits, beer, and wine restaurant licensee from whom seized((, under the following conditions:~~

(a) ~~if the licensee is going out of business and the liquor will be used for the personal use of the licensee((;~~

(b) ~~The liquor must be sold at a negotiated price after the licensee pays the board an amount to be determined by the board in lieu of the spirit, beer, and wine restaurant discount~~

~~and tax exemption in effect at that time. If the licensee does not purchase the opened bottles of liquor within the period of redemption, the liquor must be destroyed).~~

~~((2)) (2) The government agency may sell unopened beer ((and/or)) wine, or spirits to the distributor selling the beer ((and/or)) wine, or spirits at a negotiated price((, per the procedures outlined in WAC 314-20-070 and 314-24-210, as now or hereafter amended. Copies)). A copy of the inventory and bill of sale must be ((furnished to the board)) kept for three years.~~

~~((4)) (3) The government agency may sell unopened salable wine and/or beer to appropriately licensed retailers at a negotiated price under the following conditions:~~

(a) The product must meet the quality standards set forth by its manufacturer((;)) and

(b) Copies of the inventory and bill of sale must be furnished the board.

~~((5)) (4) The government agency may ship the liquor out of the state of Washington.~~

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

**WAC 314-13-010 Who can retail licensees purchase beer, wine, and spirits from?**

	Definition	Who licensees can purchase from
Beer	RCW 66.04.010(3)	<ul style="list-style-type: none"> <li>A licensed Washington distributor (including a licensed Washington brewery that distributes its own product)</li> <li>A licensed certificate of approval holder with a direct shipping to Washington retailer endorsement</li> <li><del>(( Washington state liquor-control board store or agency))</del></li> </ul>
Wine	RCW 66.04.010 <del>((39))</del> (46)	<ul style="list-style-type: none"> <li>A licensed Washington distributor (including a licensed Washington winery that distributes its own product)</li> <li>A licensed certificate of approval holder with a direct shipping to Washington retailer endorsement</li> <li><del>((Washington state liquor-control board state-run or contract liquor store))</del> <u>A Washington licensed grocery store with a wine retailer reseller endorsement (up to 24 liters per single sale per day)</u></li> </ul>

Spirits	RCW 66.04.010( <del>(35)</del> ) (41)	<p>((A Washington state liquor control board state-run or contract liquor store))</p> <ul style="list-style-type: none"> <li>• <u>A Washington spirits distributor</u></li> <li>• <u>A Washington licensed distiller or craft distiller</u></li> <li>• <u>A licensed spirits certificate of approval holder with a direct shipping to retailer endorsement</u></li> <li>• <u>A spirits retail licensee may sell to an on-premises licensee (up to 24 liters per single sale per day)</u></li> </ul>
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**AMENDATORY SECTION** (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-13-015 What method of payment can a retailer use to purchase spirits, beer, or wine from an industry member?** Per RCW (~~(66.28.010(1))~~) 66.28.270, a retail licensee must pay cash for spirits, beer, and wine prior to or at the time of delivery by an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

- (1) **Checks**, under the provisions of WAC 314-13-020.
- (2) **Credit/debit cards**, under the following provisions:
  - (a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.
  - (b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.
  - (c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.
  - (d) Both parties must maintain records of transactions and have the records readily available for board review.
  - (e) The credit or debit card charge must be initiated by the industry member no later than the first business day following delivery.
- (3) **Electronic funds transfer (EFT)**, under the following provisions:
  - (a) The EFT agreement must be voluntary on the part of both the retailer and the industry member, and there must be no discrimination for nonparticipation in EFT.
  - (b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the industry member specifying the terms and conditions for EFT as payment for alcohol or nonalcohol beverages.
  - (c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.
  - (d) Both parties must bear their respective banking costs or other costs associated with EFT service.
  - (e) Both parties must maintain records of transactions and have the records readily available for board review.
  - (f) The electronic funds transfer must be initiated by the retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a retailer to delay payment on EFT transactions for any period of time beyond

the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

**AMENDATORY SECTION** (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-13-020 What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)?** Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit, in violation of RCW (~~(66.28.010(1))~~) 66.28.300. If a transaction is reported as NSF:

- (1) The retailer must pay the full amount of the transaction to the industry member by 3 p.m. on the first business day following receipt of the NSF report.
- (2) (~~If the retailer does not make payment by this time, the industry member must report the NSF transaction to the their local board enforcement office by 5 p.m. the next business day following receipt of the NSF report.~~)
- (3) ~~The local board enforcement office will contact the retailer, who will have until 3 p.m. the next business day to pay the NSF transaction. If the retailer does not pay the industry member by this time, the board will issue an administrative violation notice to the retailer.~~
- (4) ~~Until the NSF transaction is paid:~~
  - (a) The industry member or spirits retailer licensee who received the NSF transaction will not deliver any spirits, beer, or wine to the retailer; and
  - (b) It is the responsibility of the retailer to not receive any spirits, beer, or wine from any industry member or spirits retailer licensee.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 314-13-025 How do retail licensees purchase spirituous liquor at a discount from the board?
- WAC 314-13-030 What method of payment can a retailer use to purchase spirituous liquor from the board?
- WAC 314-13-040 Do retail licensees have to sell liquor at a certain price?

**AMENDATORY SECTION** (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

**WAC 314-24-040 Wine labels—Federal certificate of label approval required—Labels to be submitted.** (1) No wine shall be imported or sold within the state of Washington until the certificate of approval holder, or domestic winery, or United States importer of foreign wine, shall have (~~(obtained from)~~) submitted to the board (~~(a)~~):

(a) ~~The federal~~ certificate of label approval for such wine(-

~~(1) A request for certificate of label approval must be submitted to the board on forms prescribed by the board, together with the following:~~

~~(a)) which has been issued by the Tax and Trade Bureau, U.S. Treasury Department, and~~

~~(b) One label of the brand and type for which ((approval)) tracking is requested for wines under seven percent alcohol by volume((-and~~

~~(b) One copy of the federal certificate of label approval for such wine which has been issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department)).~~

(2) Any change in label or product which requires reissuance of federal approval under the provisions of 27 C.F.R., Part 4, must also be submitted to the board in accordance with the foregoing provisions of this regulation.

(3) Every producer, importer, bottler, distributor, or wine certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of wine upon its premises for the purpose of analysis in order to determine whether the wine conforms to the quality standards set by the board in WAC 314-24-060 and conforms with commercial standards.

(4) No label shall be used that is misleading.

(5) No label ~~((will be approved which))~~ shall be used that is designed to be ((specially)) appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

(6) Wineries are not required to ~~((obtain a certificate of label approval from))~~ submit labels for tracking to the board for wine sold directly to Washington consumers under a direct shipper's permit. Wine labels may not be misleading and may not be designed to appeal especially to persons under the age of twenty-one.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington.** (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in ~~((section 23-D of the Washington State Liquor Act (-)))~~ RCW 66.24.140((+)), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request

and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirit's addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery returning previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery must keep on file for audit purposes clear source records (shipping documents, etc.) with monthly reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

**WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation.**

(1) A domestic winery holding a proper retail license, pursuant to chapter 66.24 RCW, may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW ~~((66.28.010))~~ 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW ~~((66.28.040))~~ 66.28.295.

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A winery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the winery premises that is not of its own production.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-24-180 Wine distributors, wine importers—Certain rights granted.** (1) Wine distributors may sell to ~~((the board))~~ retailers, export wine from the state, and purchase wine from or sell wine to another wine distributor.

(2) Wine distributors must sell and deliver product from their licensed premises.

(3) Wine importers may sell to the board, export wine from the state, or sell to wine distributors, but may not sell to another wine importer or to retailers.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-24-190 Wine suppliers and distributors.** ~~((RCW 66.28.180 requires wine distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.))~~

(1) **Definitions**~~((—))~~ —For the purposes of this chapter:

(a) ~~((A "price list" means a declaration of the prices at which any and all brands of wine and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each supplier functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of wine sold by the supplier or distributor shall be available to retailers within the state.~~

~~((b))~~ (b)) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

~~((c))~~ (b) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** ~~((and price lists—If a wine supplier or distributor lists selected items on which prices are temporarily reduced, the prices must clearly reflect all items and the selling price.))~~ —All products must be made available to all retail licensees to the extent it is reasonably practical to do so ~~((and all retail licensees must be given reasonable notice of all prices and price changes)).~~

(3) **Distributor changes**~~((—))~~ ;

(a) The following guidelines apply when a wine supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) ~~((Price lists for new distributors—When the board issues a new wine distributor license, the licensee must have a price list available.~~

~~((5))~~ (5)) **Accommodation sales**~~((—))~~ —The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-27-010 Liquor purchases by** ~~((Class))~~ Interstate Common Carrier licensees—Reports~~((—Payment of markup and taxes—Sales by in-state beer and wine suppliers))~~. (1) Any ~~((employee))~~ licensee authorized by the board ~~((and/or any licensed importer and/or distributor))~~ to sell liquor may sell liquor to the holder of ~~((a Class))~~ an Interstate Common Carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor ~~((by the board))~~ to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export ~~((from the state and, as such, will not be subject to collection of the state liquor taxes at the time of purchase by the licensee)).~~

(3) Every federally licensed interstate commercial common passenger carrier, holding an Interstate Common Carrier license ~~((pursuant to chapter 245, Laws of 1975 1st sess.))~~ shall, on or before the ~~((fifteenth))~~ twentieth day of each month, make a report to the board, upon forms approved by the board, of all spirituous liquor, beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

~~((At the time of filing the report prescribed herein, such common carrier shall pay to the board the board's markup on spirituous liquor, and state liquor taxes as applicable, on such spirituous liquor, beer and wine so served or sold, in an amount to approximate the revenue that would have been realized from such markup and taxes had such alcoholic beverages been purchased for use in the state.))~~

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state. ~~((Such importers and distributors who have paid the taxes imposed by RCW 66.24.290 or 66.24.210 on beer or wine so sold may claim refund of the taxes under procedures set forth in WAC 314.20.010 or 314.24.110, as applicable.))~~

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-30-010 Sales by manufacturers.** (1) Manufacturers licensed in accordance with RCW 66.24.150 may sell within the state:

(a) Spirituous liquor only to ~~((the board or to an authorized vendor of the board))~~ spirits distributors;

(b) Wine products only to wine distributor~~((s licensed in accordance with RCW 66.24.200))~~ licensees;

(c) Beer products only to beer ~~((certificate of approval holders as authorized by RCW 66.24.270 who also hold an importer's license as authorized by RCW 66.24.260))~~ distributor licensees; or

(d) To permit holders as authorized by ~~((Title 66))~~ RCW 66.20.010 (7) through (10).

(2) The first spirits distributor, wine distributor, or beer ~~((certificate of approval holder with a beer importer's license))~~ distributor to receive spirits, wine, or malt beverages from a distiller, manufacturer, rectifier, or bottler shall be liable for the fees and/or taxes due.

(3) Manufacturers selling spirits, wine, or malt beverage products will be considered a supplier and will be required to meet the requirements of WAC ~~((314.24.200 and 314.20.105))~~ 314-23-005, 314-24-190, and 314-20-100 respectively.

(4) Manufacturers selling spirits to a licensed spirits distributor, wine to a licensed wine distributor, or beer to a licensed beer ~~((certificate of approval holder who also has a beer importer's license))~~ distributor shall file monthly reports with the board on forms prescribed by the board showing the quantity of liquor shipped to each above referenced licensee during the preceding month. Such report shall be submitted on or before the twentieth day of the month following the month of sale or delivery.

(5) Failure to make such report at the time prescribed will be sufficient cause for the board to forthwith suspend or cancel the license privilege of the manufacturer. When the twentieth day of any month falls on a Sunday, or a legal holiday, the report may be filed not later than the close of business the next business day.

## Chapter 314-36 WAC

### ~~((LIQUOR))~~ IMPORTERS, PUBLIC STORAGE WAREHOUSES AND IMPORTATION OF LIQUOR

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-040 Principal office—Record.** (1) Each ~~((liquor))~~ spirits, beer or wine importer shall establish and maintain a principal office within the state where full and complete records are kept for three years of:

- (a) All importations;
- (b) All storage;
- (c) All removals; and
- (d) All exportations of liquor.

(2) Records are to be kept in such manner and in such form as required by the board.

(3) Each ~~((liquor))~~ spirits, beer or wine importer shall keep the board informed at all times of the location of such principal office.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-060 Public storage warehouses.** (1) No public storage warehouse shall accept, receive, or store or otherwise handle any ~~((liquor))~~ spirits, ~~((including))~~ beer, or wine, without first obtaining from the Washington state liquor control board a letter of authorization.

(2) No consumption of ~~((liquor))~~ spirits, ~~((including))~~ beer, or wine, is allowed at public storage warehouses.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-080 Authorization for private liquor storage warehouse.** A holder of a ~~((liquor))~~ spirits, beer or wine importer's license, who maintains a storage warehouse and who desires to store ~~((liquor))~~ spirits, beer, or wine imported under such ~~((liquor))~~ spirits, beer or wine importer's license, shall apply to the board for a letter of authorization. If authorization is granted, the warehouse shall be known as a private liquor storage warehouse.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-090 Liquor shall be stored in original packages.** No shipments of liquor shall be accepted or stored in an approved storage warehouse except in original packages or combinations of original packages ~~((as authorized by the board))~~.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-100 Removal of ~~((liquor))~~ spirits.** (1) No ~~((liquor))~~ spirits importer or public storage warehouse shall remove ~~((liquor))~~ spirits from any storage warehouse, except:

(a) For sale and delivery to ~~((the board))~~ a spirits distributor; or

(b) For export from the state~~(;~~

~~(c) For delivery to persons, firms or corporations authorized by Title 66 RCW to receive such liquor products; or~~

~~(d) Liquor may be removed from an authorized private liquor storage warehouse to an authorized public storage warehouse)).~~

(2) Any and all removals of ~~((liquor))~~ spirits must be made in full compliance with the Washington state liquor laws and the rules of the board.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

**WAC 314-36-130 Complete records kept.** (1) Each public storage warehouse shall keep full and complete records showing:

(a) All ~~((liquor))~~ spirits received for storage; and

(b) All removals and exportations.

(2) Records shall ~~((preserve))~~ be preserved for three years, all bills of lading or certified copies thereof~~(; and all authorizations of the board for withdrawals of samples)).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-36-010 Sales between importers.

WAC 314-36-020 Liquor importation—General.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-37-010 Liquor sales in Indian country—Appointment of tribal liquor stores—Qualifications.

WAC 314-37-020 Manufacturer's on-site liquor store appointment—Qualifications.

WAC 314-37-030 Bank credit cards and debit cards.

AMENDATORY SECTION (Amending Order 106, Resolution No. 115, filed 6/16/82)

**WAC 314-38-010 ((Special permit to consume liquor on the premises of a business not licensed)) Serve employees and guests permit under Title 66 RCW.** (1) The special permit provided by RCW 66.20.010(4) to consume liquor on the premises of a business not licensed under Title 66 RCW shall only be issued to businesses at which the service and consumption of liquor is incidental to, and does not form a portion of, the service the business is engaged in producing or

marketing. The permit shall not be used by the holder thereof for purposes of stimulating or increasing business from the general public.

(2) Each permit shall be issued for a period of twelve months from the first day of the month in which it is issued. The fee for each permit issued shall be five hundred dollars.

(3) The permit shall be issued for, and service and consumption of liquor will be limited to, specified hospitality rooms and/or dining rooms which shall be on the premises of the business applying for the permit. A separate permit is required for each business premises at which liquor is to be served or consumed. The general public shall not be permitted in the hospitality or dining room at any time during the service or consumption of liquor.

(4) The permit will authorize the service and consumption of liquor, without charge, by employees and invited guests of the business holding the permit. No sale of liquor will be authorized in any manner, whether by scrip, donation, contribution, or otherwise. No charge of any kind may be made by the permittee to invited guests for admission to the hospitality or dining room, or for any meals or other services provided to them in the hospitality or dining room.

(5) All liquor served or consumed under the permit shall be purchased from a Washington state licensed retailer ~~((or a Washington state liquor store or agency))~~ at full retail price.

(6) The permit shall be issued in the name of the business applying for it, and that business shall not allow any other person, business, or organization to utilize the permit. The issuance of any permit by the board shall not be construed as granting a vested right in any of the privileges so conferred, and a misrepresentation of fact found to have been made by the applicant or permittee shall be deemed a lack of good faith and shall constitute good and sufficient cause for the disapproval of a permit application or for the revocation or suspension of any permit issued by the board.

AMENDATORY SECTION (Amending WSR 93-20-031, filed 9/27/93, effective 10/28/93)

**WAC 314-38-050 ((Class 4)) Serve employees and guest permit—Purpose—Use.** (1) The purpose of a ~~((Class 4))~~ serve employees and guests permit as authorized by RCW 66.20.010(4) is to:

(a) Allow for the consumption of liquor products in private businesses; and

(b) Not to compete with liquor licensed establishments.

(2) All liquor served by holders of a ~~((Class 4))~~ serve employees and guests permit must be purchased at retail from the board or a retail liquor licensee.

(3) Liquor may not be sold by holders of a ~~((Class 4))~~ serve employees and guests permit, but may be provided at no charge for consumption on the premises of the permit holder.

(4) The holder of a ~~((Class 4))~~ serve employees and guests permit may serve liquor for no more than twenty-four hours during any weekly (168 hour) period.

(5) While the ~~((Class 4))~~ serve employees and guests permit holder may advertise their business services, no liquor service shall be advertised.



AMENDATORY SECTION (Amending WSR 01-15-049, filed 7/13/01, effective 8/13/01)

**WAC 314-42-010 Liquor control board administrative director.** (1) The purpose of this rule is to ensure efficient and consistent administration of the liquor control board through the delegation of certain administrative functions to an administrative director. The delegation of administrative functions by the board, as provided for in this section, does not alter the board's statutory responsibility to administer Title 66 RCW.

(2) The administrative director will be appointed by, and serve at the pleasure of, the board, and will perform his/her duties under the general control, management, and supervision of the board.

(3) The following duties are delegated by the board to the administrative director:

(a) Appointing authority as defined by WAC 356-05-040, 356-30-007, and 356-34-011 for all liquor control board employees, with the exception of the director and staff of the policy, legislative, and media relations division as described in subsection (4)((~~g~~))(e) and staff that report directly to the board members;

(b) Authorize expenditures of funds from the board approved internal budget;

(c) Purchase, lease, contract, or otherwise acquire any goods, services, and products within the board approved internal budget;

(d) (~~Approve liquor purchase orders authorized by the board (this authority may be further delegated);~~

(~~e~~)) Approve uncontested licenses and permits (this authority may be further delegated);

((~~f~~)) (e) Assign duties, coordinate agency operations, and establish performance standards and timelines;

((~~g~~)) (f) Approve disbursements of excess funds from the liquor revolving fund; and

((~~h~~)) (g) Perform other duties of a routine administrative nature identified by the board.

(4) The following duties will not be delegated and will remain functions of the board:

(a) Final approval of agency-wide and division budgets as prepared by the administrative director;

(b) Revocation or suspension of a license or permit;

(c) (~~Appeals of price posting actions;~~

(~~d~~)) Appeals of administrative actions taken against liquor and tobacco licensees;

((~~e~~)) ~~Approval of product listings and delistings for state liquor stores and agencies;~~

(~~f~~)) (d) Approval of contested liquor license and permit applications; and

((~~g~~)) (e) Direct oversight of the policy, legislative, and media relations division and staff that report directly to the board members, including:

(i) Rule making actions,

(ii) Approval of agency-request legislative proposals, and

(iii) The employment, termination, and discipline of the director and staff of the policy, legislative, and media relations division and staff that report directly to the board members.

AMENDATORY SECTION (Amending WSR 11-24-099, filed 12/7/11, effective 1/7/12)

**WAC 314-44-005 Agent's license required—Eligible employers defined—Certain classes limited—Bona fide entity defined—Prohibited practices.** (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of a person, firm, or corporation within the state of Washington holding any of the following licenses:

(a) A beer certificate of approval ((issued pursuant to RCW 66.24.270 or 66.24.206,)) license;

(b) A beer distributor's license(;;);

(c) A brewer's license(;;);

(d) A beer importer's license((-a domestic winery));

(e) A wine certificate of approval license;

(f) A wine distributor license((-a wine importer's));

(g) A domestic winery license((-or));

(h) A wine ((distributor's) importer's license ((within the state of Washington, or));

(i) A spirits certificate of approval license;

(j) A spirits distributor license;

(k) A distiller or craft distiller license; or

(l) A spirits importer license.

(3) An agent's license may be issued to the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer shall apply to the board for such an agent's license for his accredited representatives on application forms prescribed and furnished by the board. This subsection shall not apply to drivers who deliver beer or wine or to domestic wineries or their employees. Employees of a domestic winery must have identification on them that indicates they work for the winery. Identification may be in the form of a winery's business card, employee badge, or similar identification.

((~~3~~)) (4) Any person acting as an independent contractor for a winery must have an agent's license. An independent contractor is defined as an independent business person who runs his or her own business that provides services to another individual or business. The independent contractor is a separate business entity. The earnings of a person who is working as an independent contractor are subject to self-employment tax.

((~~4~~)) (5) Every firm which applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof that such firm is in fact a bona fide business entity.

((~~5~~)) (6) Only the licensed agent of a distiller, manufacturer, importer, or distributor of spirituous liquor may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

((~~6~~)) ~~No distiller, manufacturer, importer, distributor of liquor, or agent thereof, shall solicit either in person, by mail or otherwise, any liquor vendor or employee of the board, except the purchasing agent thereof, for the purpose or with~~

the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise.

~~(7) No distiller, manufacturer, importer, distributor of liquor, or agent thereof, shall visit any state liquor store or agency for the purpose of exerting influence on employees for sales promotion or to secure information regarding inventory or any other matter relating to sales. They may deliver, or have delivered, and assemble where required, consumer offers and display material that have been approved by the board or its designee. Violation of this section will result in a penalty against all company items, which in appropriate cases could mean a partial or total delisting of those items.~~

~~(8) No distiller, manufacturer, importer, or distributor of liquor, or agent thereof, shall give or offer to any employee of the board any entertainment, gratuity or other consideration for the purpose of inducing or promoting the sale of merchandise.~~

~~(9)) (7) No distiller, manufacturer, importer, or distributor, or agent thereof, shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any retail licensee to induce or promote the sale of liquor, including the payment of tips to such licensees or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.040, and other applicable laws and rules.~~

~~((10) Upon the infraction of any law or regulation by any distiller, manufacturer, importer, distributor, or agent, the board may, in addition to imposing other penalties as prescribed by law, remove such firm's products from the sales list of the board, and/or prohibit the sale of any brand or brands of beer or wine involved as provided in RCW 66.28.030.~~

~~(11)) (8) Upon the termination of the employment of a licensed agent, his employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.~~

AMENDATORY SECTION (Amending WSR 10-20-086, filed 9/30/10, effective 10/31/10)

**WAC 314-45-010 Convention defined—Hospitality rooms, display booths, receptions and similar activities—Permits required—Fees—Procedures.** Activities pursuant to RCW 66.20.010 (8), (9), a manufacturer, importer, distributor, or agent thereof, may serve or donate liquor without charge to delegates and guests at a bona fide convention of a trade association composed of licensees of the board, subject to conditions set forth in this regulation.

(1) For the purposes of this section a "convention" is defined as a bona fide session or assembly of the general membership of a trade association composed of licensees of the board.

(2) Such manufacturer, importer, distributor, or agent thereof, must hold a special permit issued by the board to engage in such an activity at such convention. The fee for each such special permit shall be \$25.00. A permit is required for each booth or room a manufacturer, importer, distributor, or agent thereof is serving or donating liquor. Application for

such permit shall be submitted on a form prescribed by the board. The statutory permits applicable to such activities are:

(a) A special permit provided for in RCW 66.20.010(8) which authorizes the holder thereof to serve liquor without charge to delegates and guests in a hospitality room or from a booth in a board-approved suppliers' display room at such convention.

(b) A special permit provided for in RCW 66.20.010(9) which authorizes the holder thereof to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at such convention.

(3) Any liquor served or donated as provided herein is authorized only for consumption within a specific area designated on an application for permit and approved by the board.

(4) A special permit holder who serves or donates any beer or wine on which state taxes have not been paid, must file a report of the quantity so served or donated and remit the amount of the taxes to the board, in conformity with RCW 66.20.010 (8), (9).

(5) Any spirituous liquor served or donated shall be purchased from ~~((the board or a spirit, beer and wine restaurant licensee))~~ a licensed spirits retailer.

(6) Any licensee promoting a trade show event shall submit a list of all suppliers attending the event.

AMENDATORY SECTION (Amending WSR 09-14-035, filed 6/24/09, effective 7/25/09)

**WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale.** A distiller, craft distiller, spirits distributor, spirits certificate of approval holder, spirits importer, or their agent may, for the purpose of product promotion, provide without charge single samples to retail licensees authorized to sell spirits and their employees.

(1) Samples are limited to 750 ml and no more than one sample of each product may be provided to any one licensed business.

~~(2) ((All spirit samples must be purchased at retail from the board from existing stocks or by special order.~~

~~(3))~~ Only products not purchased by the retail licensee within the last twelve months from the distiller or their agent or existing products with a change in alcohol proof or formula may be sampled. If there is a complete change of ownership of the retail licensee to another entity, the former retail licensee's purchase of the product is not deemed a purchase made by the successor retail licensee for purposes of this provision.

~~((4))~~ (3) Both the retailer and distiller, craft distiller, spirits certificate of approval holder, spirits distributor, and spirits importer must retain records of sampling for a period of ~~((two))~~ three years. The records shall include the brand and type of sample and the date of sampling.

~~((5))~~ (4) If the distiller, craft distiller, spirits certificate of approval holder, spirits distributor, and spirits importer keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the required information. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices) underlying the summary account data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

~~((6))~~ (5) The provisions contained in subsection (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-64-010	Purpose.
WAC 314-64-020	Definitions.
WAC 314-64-040	Procedures for board samples.
WAC 314-64-050	Accounting for board samples.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-76-015	What is the purpose of this chapter?
WAC 314-76-020	Who may special order liquor from the board?
WAC 314-76-025	What liquor products may be special ordered?
WAC 314-76-030	Are there special requirements for a special order?
WAC 314-76-035	How does an individual place a special order?

**WSR 12-17-012**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 2, 2012, 8:31 a.m., effective September 2, 2012]

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

Purpose: Amends WAC 181-85-075 providing for the professional growth plan submission to receive continuing

education credit. Repeals WAC 181-85-034, the program for awarding clock hours for professional growth plans at the district level.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-85-075].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 12-11-031 on May 9, 2012.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2 [1], Repealed 0 [1].

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2 [1], Repealed 0 [1]; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 30, 2012.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-85-075 Continuing education requirement.** Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers. WAC 181-78A-540(1) for administrators, or WAC 181-78A-540(2) for educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

Each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-85-034	Continuing education credit hour—Definition—Professional development system—Professional growth plan.
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#### WSR 12-17-018

##### PERMANENT RULES

#### STATE BOARD OF HEALTH

[Filed August 2, 2012, 12:50 p.m., effective September 2, 2012]

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

Purpose: WAC 246-105-040, the rule will make school and child care immunization requirements consistent with national standards by referencing the 2012 Advisory Committee on Immunization Practices' Recommended Childhood and Adolescent Immunization Schedule.

Citation of Existing Rules Affected by this Order: Amending WAC 246-105-040.

Statutory Authority for Adoption: RCW 28A.210.140.

Adopted under notice filed as WSR 12-10-011 on April 19, 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 2, 2012.

Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 11-05-060, filed 2/11/11, effective 3/14/11)

**WAC 246-105-040 Requirements based on national immunization guidelines.** The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the ~~((following published))~~ national immunization guidelines ~~((a) Effective July 1, 2009,))~~ in the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States ~~((2008))~~ 2012"; as published in the *Morbidity and Mortality Week Report* (MMWR) ~~((2008;57(01)))~~ 2012;61(05):Q1-4.

~~((b) Effective July 1, 2011, the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2010"; as published in the *Morbidity and Mortality Week Report* (MMWR), 2010;58(51 and 52):Q1-4.))~~

~~((b) Effective July 1, 2011, the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2010"; as published in the *Morbidity and Mortality Week Report* (MMWR), 2010;58(51 and 52):Q1-4.))~~

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(b) Diagnosis or verification of a history of varicella disease by a health care provider; or

(c) Diagnosis or verification of a history of herpes zoster by a health care provider; or

(d) Serologic proof of immunity against varicella; or

(e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

#### WSR 12-17-023

##### PERMANENT RULES

#### HIGHLINE COMMUNITY COLLEGE

[Filed August 6, 2012, 11:59 a.m., effective September 6, 2012]

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

Purpose: The purpose of the proposal is to amend several chapters of Title 132I WAC to clarify and revise these chapters to accommodate contemporary business practices and policies.

The college's administrators had engaged in extensive discussions about the proposed WAC revisions with staff, faculty, and students over a five-month period. The board of trustees conducted a public hearing to receive written and oral testimony about the proposed WAC revision as required by RCW 34.05.320

The following chapters were revised: Chapters 132I-122 and 132I-130 WAC.

Citation of Existing Rules Affected by this Order: Amending chapters 132I-122 and 132I-130 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 12-09-085 on April 18, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1 [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 14 [0], Amended 69 [3], Repealed 7 [0].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13 [0], Amended 69 [3], Repealed 7 [0].

Number of Sections Adopted Using Negotiated Rule Making: New 14 [0], Amended 69 [3], Repealed 7 [0]; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 12, 2012.

Larry T. Yok  
Vice-President  
for Administration

**AMENDATORY SECTION** (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

**WAC 132I-122-020 Withholding services for outstanding debts.** ~~((Upon receipt of a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person, in writing by certified mail to the last known address, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided to the individual.~~

~~Notification that services will be withheld)) (1) Where there is an outstanding debt owed to the college and upon receipt of a written request inquiring as to the reason(s) for services or refund being withheld, the college shall provide a written explanation why the services or refund are being withheld. The college will also identify the amount of the outstanding debt, and further explain that until that debt is satisfied (or stayed by bankruptcy proceedings or discharged in bankruptcy), no such services and/or refund will be provided to the individual. The written explanation shall also inform the individual that he or she has a right to a hearing before a person designated by the ((~~president of the institution~~)) vice-president for administration if he or she believes that no debt is owed((-~~Notification shall also indicate~~)) and specify that the request for the hearing must be made within ((~~twenty-one~~) ten days from the date ((~~such notice~~)) the written explanation is received.~~

(2) Upon receipt of a timely request for a hearing, the person designated by the ((~~president~~)) vice-president shall have the records and files of the institution available for review and, at that time, shall hold a brief adjudicative pro-

ceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, an order shall be entered by the ((~~president's~~)) vice-president's designee indicating whether the institution is correct in withholding services and/or applying off set for the outstanding debt. If the outstanding debt is found to be owed by the individual involved, no further services shall be provided until the debt has been paid. The order and notice of discontinued service shall be sent to the individual within ten business days after the hearing.

**AMENDATORY SECTION** (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

**WAC 132I-122-030 Appeal of initial order upholding the withholding of services for outstanding debts.** Any person aggrieved by an order issued under WAC 132I-122-020 may file an appeal with the president or his or her designee. The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal. The appeal must be filed within ((~~twenty-one~~)) ten days from the date on which the appellant received notification of the order issued under WAC 132I-122-020 upholding the withholding of services for outstanding debts. The president's or designee's determination shall be final.

**AMENDATORY SECTION** (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

**WAC 132I-130-020 Location of schedules.** Additional and detailed information and specific amounts to be charged for each category of students will be found in the class schedule, college web site, and at the following locations on the Highline campus:

- (1) The office of admissions;
- (2) The registration and records office((;
- (3) ~~The controller's office;~~
- (4) ~~The continuing education office)).~~

**WSR 12-17-039**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 7, 2012, 4:37 p.m., effective September 7, 2012]

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

Purpose: Amends WAC 181-85-033 to provide clock hours for educators scoring the ProTeach portfolio.

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

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 12-08-053 on April 3, 2012.

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

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 30, 2012.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-04-031, filed 1/26/12, effective 2/26/12)

**WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions.** (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and ~~((181-78A-505))~~ 181-79A-030, members of a professional growth team, excluding the candidate, shall receive the equivalent of ~~((ten))~~ three continuing education credit hours. The team member may not receive more than the equivalent of ~~((twenty))~~ six continuing education credit hours, as defined by this section, during a calendar year period.

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

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

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

interns, educational staff associate interns, and paraprofessionals.

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

(5) Notwithstanding any provisions of this chapter to the contrary, teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 will receive the equivalent of one hundred fifty continuing education credit hours.

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

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

~~((8))~~ (7) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours for each four assessments scored, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours.

(8) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington ProTeach Portfolio assessment shall receive the equivalent of ten continuing education credit hours for completing one full scoring session during a calendar year, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment shall receive the equivalent of ten additional continuing education credit hours.

**WSR 12-17-041**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 08-08—Filed August 8, 2012, 9:51 a.m., effective October 1, 2012]

Effective Date of Rule: October 1, 2012.

Purpose: The department of ecology is adopting amendments to chapter 173-360 WAC, Underground storage tank (UST) regulations. The rule amendments:

1. Authorize ecology to stop regulated substances from being delivered to UST systems that do not comply with regulatory requirements.

2. Establish an operator training program for individuals who operate and maintain UST systems. Current operators must be trained by December 31, 2012.

3. Require secondary containment of tanks and pipes installed or replaced after October 1, 2012.

4. Require containment under dispenser systems if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after October 1, 2012.

The rule amendments are necessary to implement changes to the state's UST program specified by the legislature in 2007 in SSB 5475, which amended chapter 90.76 RCW. Those changes are necessary to:

1. Comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B).

2. Reduce the number and severity of releases of hazardous substances from UST systems, which pose a serious threat to human health and the environment, including drinking water.

Citation of Existing Rules Affected by this Order: Amending chapter 173-360 WAC.

Statutory Authority for Adoption: Chapter 90.76 RCW.

Adopted under notice filed as WSR 12-07-084 on March 21, 2012.

Changes Other than Editing from Proposed to Adopted Version: The department of ecology made the following changes other than editing to the proposed amendments to chapter 173-360 WAC, which were filed as WSR 12-07-084 on March 21, 2012:

1. WAC 173-360-120, clarified the definition of "facility compliance tag."

2. WAC 173-360-120, corrected the definition of "temporarily closed UST system."

3. WAC 173-360-730(1), changed provision to allow Class A and Class B operators to also be trained by UST owners and operators approved by the department.

4. WAC 173-360-730 (2)(a) and (4)(b), clarified that Class A and Class B operators must be trained before they are allowed to train Class C operators.

5. WAC 173-360-730 (2)(b), eliminated proposed requirements that Class C operator training be facility-specific and include written instructions.

6. WAC 173-360-730(4), with respect to acceptance of training completed before the effective date of the rule amendments, specified that the date is October 1, 2012.

7. WAC 173-360-740 and 173-360-730 (4)(b), eliminated proposed retraining requirements for Class C operators.

8. WAC 173-360-760(2), eliminated proposed requirement that a Class A or Class B operator must sign Class C operator training certificates regardless of whether they provided the training. They only need to sign the certificates if they provided the training.

9. WAC 173-360-810(1) and 173-360-820 (1) and (2), changed the effective date of secondary containment requirements for tanks and piping from July 1, 2007 (which is the date specified in the authorizing statute), to October 1, 2012 (which is the effective date of the rule amendments). Only tanks and piping installed or replaced after that date must meet the requirements.

10. WAC 173-360-820(4), clarified the type of suction piping requiring interstitial monitoring.

11. WAC 173-360-830(1), clarified that the under-dispenser containment requirements apply only to UST systems connected to a dispenser.

12. WAC 173-360-830(1), changed the effective date of the under-dispenser containment requirements from July 1, 2007 (which is the date specified in the authorizing statute), to October 1, 2012 (which is the effective date of the rule). Containment is only required if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after that date.

These changes are explained in greater detail in the concise explanatory statement for the rule amendments, which is available at [www.ecy.wa.gov/biblio/1209049.html](http://www.ecy.wa.gov/biblio/1209049.html).

A final cost-benefit analysis is available by contacting Adrienne Dorrah, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7195, fax (360) 407-7154, e-mail [adrienne.dorrah@ecy.wa.gov](mailto:adrienne.dorrah@ecy.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 15, Amended 15, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 15, Repealed 0.

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

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

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

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

Date Adopted: August 8, 2012.

Ted Sturdevant  
Director

AMENDATORY SECTION (Amending WSR 95-04-102, filed 2/1/95, effective 3/4/95)

**WAC 173-360-120 Definitions.** For the purposes of this chapter, the following definitions shall apply:

"Abandoned" means left unused indefinitely, without being substantially emptied or permanently altered structurally to prevent reuse.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and/or to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Certified UST supervisor" means a person certified by the International Fire Code Institute or another nationally recognized organization, as approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

"Change-in-service" means to change the substances stored in an UST system from regulated substances to unregulated substances.

"Class A operator" means an individual designated by an UST system owner or operator as having primary responsibility for the operation and maintenance of the system. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means an individual designated by an UST system owner or operator as having control of or responsibility for the day-to-day operation and maintenance of the system. The Class B operator typically performs or ensures the performance of operation and maintenance activities at an UST facility, maintains records of those activities, and reports those activities to the department.

"Class C operator" means an employee of an UST system owner or operator responsible for initially responding to alarms or other indications of emergencies caused by spills, overfills, leaks, or releases from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances from the system.

"Closure" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "decommissioning."

"Compatible" means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another such that the stored substance will not pass through the wall or lining of the tank and connected piping for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrosion expert" means a person who possesses a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Decommissioning" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "closure."

"Deferral" means a category of UST systems which are subject to certain, but not all, of the requirements of this chapter as specified in WAC 173-360-110(3).

"Delegated agency" means a state or local government agency which has been delegated responsibility by the department for administering any portion of an UST program.

"De minimis concentration" means either less than one inch of regulated substance, or less than a reportable quantity, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Department" means the department of ecology.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).



"Director" means the director of the department of ecology.

"Dispenser" means a device used to dispense and meter regulated substances from an UST system.

"Dispenser system" means a dispenser and the above-ground equipment necessary to connect the dispenser to an UST system, including check valves, shear valves, unburied risers, flexible connectors, and other transitional components.

"Double-walled tanks" and "double-walled piping" mean tanks and piping consisting of an inner wall and an outer wall with an interstitial space capable of being monitored for leaks.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Emergency power generator" means an engine that uses fuel to produce auxiliary electrical or mechanical energy for use in emergencies.

"Emergency power generator tank" means a tank that stores fuel solely for use by an emergency power generator.

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing UST system" means an UST system used to contain an accumulation of regulated substances or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if: The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

Either a continuous on-site physical construction or installation program had begun; or

The owner or operator had entered into contractual obligations—which cannot be ~~(cancelled)~~ canceled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Facility compliance tag" means a white-colored metal plate with a green-colored identification number issued by the department for display at an UST facility in a location clearly visible to the product deliverer and persons withdrawing waste oil. Each UST facility is identified by a facility compliance tag. Except as otherwise provided in this chapter, it is unlawful for regulated substances to be delivered or deposited into an UST system, or withdrawn from a waste oil UST system, at an UST facility without a valid and properly displayed facility compliance tag.

"False alarm" means indicating that an UST system is leaking when in fact it is tight.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property and used for farm purposes. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations. It does not include laboratories where animals are raised, land used to grow timber, pesticide aviation operations, retail stores or garden centers where nursery products are marketed but not grown, cemeter-

ies, golf courses, or other facilities dedicated primarily to recreation or aesthetics, or other nonagricultural activities.

"Field-constructed tank" means an underground storage tank that is constructed in the field rather than factory built because of its large size.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: A 10-K report submitted to the SEC; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in performing tank services.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Groundwater" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Immiscible" means largely incapable of blending or mixing.

"Installation" means the activity of placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

"Interstitial space" means the space between the primary and secondary containment systems (e.g., the space between the inner and outer walls of a tank or pipe).

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: By the United States Environmental Protection Agency (EPA) or a state to require corrective action or to recover the costs of corrective action; by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or by any person to enforce the terms of a financial assurance mechanism.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New UST system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988. (See also "existing tank system.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of WAC 173-360-400 through 173-360-499 and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under WAC 173-360-380 through 173-360-398.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means: In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use. In the event that the owner of an UST system cannot be physically located, the owner shall be the person who owns the property where the UST system is located, except any lien holder and any agency of the state or unit of local government which acquired own-

ership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to a release or threatened release of a regulated substance from the UST system.

"Owner or operator," means, for the purposes of WAC 173-360-400 through 173-360-499, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

"Party" means a person or group concerned or having or taking part in any affair, matter, transaction, or proceeding.

"Permanently closed" means: (1) In the case of an UST system taken out of operation before December 22, 1988, the UST system was substantially emptied of regulated substances or permanently altered structurally to prevent reuse; (2) in the case of an UST system taken out of operation after December 21, 1988, and before the effective date of this chapter, the UST system was closed in accordance with 40 C.F.R. 280; and (3) in the case of an UST system taken out of operation on or after the effective date of this chapter, the UST system was closed in accordance with WAC 173-360-385.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Piping run" means all underground piping connecting an individual submersible pump or suction stub to associated dispenser systems or other end-use equipment.

"Product deliverer" means any person who delivers or deposits product into an UST system. This term includes major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associ-

ated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360-413 through 173-360-436, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Red tag" means a red-colored tag or device on the fill pipe of an UST system that clearly identifies the system as ineligible for product delivery or waste oil withdrawal. The tag or device is tamper resistant and is easily visible to the product deliverer and persons withdrawing waste oil. The tag or device clearly states and conveys, as applicable, that it is unlawful for regulated substances to be delivered or deposited into an UST system or withdrawn from a waste oil UST system.

"Regulated substance" means:

Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and any other regulated substances); and

Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term "regulated substance" does not include propane or asphalt or any other petroleum product which is not liquid at standard conditions of temperature and pressure.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system to groundwater, surface water or soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of a regulated substance from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes; such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the tank is used by the owner solely for his or her own personal use, rather than to maintain the overall facility.

"Retrofitting" means the repair or upgrading of an existing underground storage tank system including, but not limited to, installation of splash, spill and overflow protection, installing or replacing monitoring systems, adding cathodic

protective systems, tank repair, replacement of piping, valves, fill pipes or vents and installing tank liners.

"Secondary containment" means a release prevention system for tanks and piping consisting of an inner barrier and an outer barrier with an interstitial space capable of being monitored for leaks.

"Septic tank" is a water-tight covered receptacle designed and used to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site assessment" means investigating an UST site for the presence of a release at the time of closure or change-in-service.

"Site check" means investigating an UST site for the presence of a release when evidence indicates that a release may have occurred.

"((Stormwater)) Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Structural defect" means a hole or crack in the tank portion of the UST system, which has either caused a release from the system or is being repaired to prevent a release from the system.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Supervisor" means a person certified by the International Fire Code Institute, or other nationally recognized organization, operating independently or employed by a contractor, who is responsible for directing and overseeing the performance of tank services at a facility.

"Surface impoundment" is a natural topographic depression, excavation, or diked area formed primarily of earthen materials (although it may be lined with synthetic materials) that is not an injection well.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Tank permit" means a tank tag, as required by RCW 90.76.020(4).

"Tank services" include underground storage tank installation, decommissioning, retrofitting, and testing.

"Temporarily closed UST system" means an UST system that has been removed from service and will be returned to service, undergo a change-in-service, or be permanently closed in the future.

"Termination" under WAC 173-360-476 and 173-360-480 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Testing" means applying a method to determine the integrity of an underground storage tank.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, intrusion of groundwater into a tank system.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser system from reaching soil or ground water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any of the exempt UST systems specified in WAC 173-360-110(2), or any piping connected thereto.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of regulated substances.

"UST site" or "site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property within a contiguous ownership that is associated with the use of the tanks.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

**WAC 173-360-160 Enforcement.** (1) **Authority.** The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston County Superior Court or issuing such order as the director deems appropriate to:

(a) Enjoin any threatened or continuing violation of this chapter or chapter 90.76 RCW;

(b) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter or chapter 90.76 RCW and is endangering or causing damage to public health or the environment;

(c) Require compliance with requests for information, access, testing, or monitoring under WAC 173-360-140 or RCW 90.76.060; ~~((or))~~

(d) Prohibit the delivery, deposit, or acceptance of a regulated substance to an UST system identified by the department to be ineligible for such delivery, deposit, or acceptance in accordance with WAC 173-360-165 and chapter 90.76 RCW; or

(e) Assess and recover civil penalties authorized under WAC 173-360-170 and RCW 90.76.080.

(2) **Procedures.** The department's enforcement procedures shall be consistent with and no less stringent than those required by 40 C.F.R. 281.41 ~~((and amendments thereto))~~, as amended, and section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).

(3) **Appeals.** A person subject to an order issued under this chapter may appeal the order to the pollution control hearings board in accordance with RCW 43.21B.310.

#### NEW SECTION

**WAC 173-360-165 Delivery prohibition.** (1) **Authority.** If the department determines the owners and operators of an UST system are violating any requirement of this chapter or chapter 90.76 RCW, the department may prohibit the delivery, deposit, or acceptance of regulated substances to the system or the entire UST facility where the system is located.

(2) **Procedures.** The department's procedures for enforcing delivery prohibition shall be consistent with and no less stringent than those required by section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).

(3) **Identification.** The department may identify an UST system subject to delivery prohibition by either:

(a) Affixing a red tag to the fill pipe of the system; or

(b) Revoking the facility compliance tag of the UST facility where the system is located.

(4) **Prohibition.** Without the prior written authorization of the department, product deliverers may not deliver or deposit, and owners and operators may not accept the delivery or deposit of, regulated substances into an UST system if:

(a) A red tag is attached to the fill pipe of the system; or

(b) A valid facility compliance tag is not properly displayed at the UST facility where the system is located.

(5) **Withdrawal of waste oil.** Without the prior written authorization of the department, persons may not withdraw, and owners and operators may not allow the withdrawal of, regulated substances from a waste oil UST system subject to delivery prohibition.

(6) **Unauthorized removal of red tags.** No person may remove or alter a red tag without the prior written authorization of the department. The unauthorized removal or alteration of a red tag constitutes a violation of this chapter.

**PART VII  
OPERATOR TRAINING REQUIREMENTS**

NEW SECTION

**WAC 173-360-700 Purpose and applicability.** (1) This part establishes a mandatory operator training program for three distinct classes of individuals who operate and maintain UST systems. The program is designed to prevent and mitigate releases from UST systems by ensuring that those individuals know how to properly operate and maintain those systems and respond to any spills, overfills, leaks, or releases from those systems.

(2) Owners and operators of UST systems shall continuously comply with the requirements of this part from their installation until their permanent closure or change-in-service, including during any period of temporary closure.

NEW SECTION

**WAC 173-360-710 Designation of operators.** UST system owners and operators shall designate individuals as Class A, Class B, and Class C operators in accordance with the requirements of this section.

(1) At least one Class A and one Class B operator must be designated for each UST system or group of systems at an UST facility.

(2) Each individual who meets the definition of Class C operator at an UST facility must be designated as a Class C operator. Class C operators must be employees of the UST system owner or operator.

(3) Separate individuals may be designated for each operator class or an individual may be designated to more than one operator class.

NEW SECTION

**WAC 173-360-720 Timing of operator training.** UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements in WAC 173-360-730 by the dates specified in this section.

(1) Class A, Class B, and Class C operators must initially be designated and trained by December 31, 2012.

(2) Class A and Class B operators designated after December 31, 2012, must be trained within sixty days of assuming duties of the operator class.

(3) Class C operators designated after December 31, 2012, must be trained before assuming duties of the operator class.

NEW SECTION

**WAC 173-360-730 Training requirements for operators.** UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements of this section. Individuals designated for more than one operator class must successfully complete the training required for each operator class that he or she is designated.

(1) **Class A and Class B operators.** Each Class A and Class B operator must successfully complete a classroom, computer, or field-based training program or examination that:

(a) Is developed and administered by the department, an UST system owner or operator approved by the department, or an independent third party approved by the department;

(b) Covers the following subject areas and associated requirements in this chapter. Training programs and examinations may be facility-specific:

(i) Administrative requirements, including:

(A) Licensing and fees;

(B) Facility compliance tags;

(C) Authority to accept product delivery;

(D) Financial responsibility; and

(E) Reporting and recordkeeping;

(ii) Certification and use of service providers;

(iii) Compliance inspections and enforcement;

(iv) Overview of UST systems and components;

(v) Product and equipment compatibility;

(vi) Installation and repair requirements;

(vii) Spill and overfill prevention;

(viii) Release detection;

(ix) Corrosion protection and internal lining;

(x) Secondary and under-dispenser containment;

(xi) Operation and maintenance requirements;

(xii) Release reporting and confirmation requirements;

(xiii) Overview of site assessment requirements;

(xiv) Overview of cleanup requirements for releases, including the applicability of chapter 173-340 WAC;

(xv) Temporary closure, permanent closure, and change-in-service requirements;

(xvi) Operator training requirements, including training of Class C operators; and

(xvii) Any other subject areas specified by the department; and

(c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.

(2) **Class C operators.** Each Class C operator must successfully complete a classroom, computer, or field-based training program that:

(a) Is developed and administered by the department, a trained Class A or Class B operator, or an independent third party approved by the department;

(b) Provides training on how to respond to emergencies and alarms, including:

(i) Locating emergency response equipment;

(ii) Operating any emergency shut-off systems;

(iii) Identifying and responding to any alarms; and

(iv) Responding to and reporting any spills or releases; and

(c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.

(3) **Reciprocity for out-of-state training.** Class A and Class B operators previously designated in another state or at

a tribal UST facility shall be deemed to meet the training requirements in subsection (1) of this section if:

(a) They successfully completed a training program or examination meeting the requirements of that state or 40 C.F.R. Part 280, as applicable; and

(b) They possess the training records required under WAC 173-360-760(2) and the records identify the state where they were designated and trained.

**(4) Acceptance of prior in-state training.**

(a) Class A and Class B operators who successfully completed an applicable training program or examination approved by the department before October 1, 2012, and possess the training records required in WAC 173-360-760(2) shall be deemed to meet the training requirements in subsection (1) of this section.

(b) Class C operators who successfully completed a training program approved by the department or administered by a trained Class A or Class B operator before October 1, 2012, and possess the training records required in WAC 173-360-760(2) shall be deemed to meet the training requirements in subsection (2) of this section.

NEW SECTION

**WAC 173-360-740 Retraining requirements for Class A and Class B operators.** UST system owners and operators shall ensure that Class A and Class B operators are retrained, as applicable, in accordance with the requirements of this section.

(1) **Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the Class A and Class B operators of that system to be retrained in accordance with subsection (2) of this section. However, this provision does not apply to Class A and Class B operators who are retrained annually using a training program or examination meeting the requirements in WAC 173-360-730(1).

(2) **Requirements.** Within sixty days of receipt of the department's determination of noncompliance, Class A and Class B operators requiring retraining must successfully complete a training program or comparable examination meeting the requirements in WAC 173-360-730(1) and submit a copy of the certificate of completion to the department. At a minimum, the retraining must cover the areas determined to be out of compliance.

NEW SECTION

**WAC 173-360-745 Operation and maintenance plans.** UST system owners and operators shall ensure that operation and maintenance plans are developed and maintained, as applicable, in accordance with the requirements of this section.

(1) **Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the owners and operators to develop an operation and maintenance plan for each UST system at the UST facility where the noncompliant system is located. The department may require the development of such a plan in place of

or in addition to any retraining of Class A or Class B operators required under WAC 173-360-740.

(2) **Development.** Operation and maintenance plans for UST systems must be developed and a copy submitted to the department within sixty days of receipt of the department's determination of noncompliance.

(3) **Updates.** The operation and maintenance plan for an UST system must be updated within sixty days of any modification of the system that changes how the system must be operated and maintained under this chapter.

(4) **Content.** At a minimum, the operation and maintenance plan for an UST system must include the actions required under this chapter to operate and maintain the system, including:

- (a) Release detection;
- (b) Spill and overflow prevention;
- (c) Corrosion protection, if applicable; and
- (d) Internal lining, if applicable.

(5) **Recordkeeping.** Operation and maintenance plans for UST systems must be maintained and made available to the department in accordance with WAC 173-360-210(3). Plans must be maintained until UST systems are permanently closed or undergo a change-in-service.

NEW SECTION

**WAC 173-360-750 Emergency response requirements.** (1) **Presence of operators.** While an UST facility is manned, UST system owners and operators shall ensure at least one of the individuals manning the facility is a properly trained Class A, Class B, or Class C operator.

(2) **Signage.** At each UST facility, UST system owners and operators shall post and maintain signage providing emergency response information. The signage must:

(a) Be posted in prominent areas of the facility that are easily visible to individuals who dispense or deliver regulated substances;

(b) Identify the location of fire extinguishers and any emergency shut-off devices at the facility; and

(c) Provide instructions on what to do in case of an emergency at the facility. At a minimum, the instructions must include the following or equivalent wording:

(Name and address of facility)

IN CASE OF FIRE, SPILL OR RELEASE

(Insert if applicable: Use emergency shut off)

Call the fire department: (911 or local fire department telephone number)

Call the facility operator: (24-hour telephone number)

NEW SECTION

**WAC 173-360-760 Documentation and recordkeeping.** UST system owners and operators shall maintain records documenting all currently designated Class A, Class B, and Class C operators at an UST facility and the training received by those operators. The records must be maintained and made available in accordance with WAC 173-360-210(3).

(1) **Designated operators.** Records documenting Class A, Class B, and Class C operators at an UST facility must include the following information:

- (a) The facility's name, address, and compliance tag number; and
- (b) For each individual designated at the facility:
  - (i) The name of the individual;
  - (ii) The UST systems and operator classes to which the individual has been designated;
  - (iii) The date the individual assumed the duties of each operator class; and
  - (iv) The date the individual completed initial training and any required retraining for each operator class.
- (2) **Training of designated operators.** Records documenting the initial training and any required retraining of Class A, Class B, and Class C operators must include a certificate of completion. Certificates must include the following information:
  - (a) The name of the trainee;
  - (b) The date the trainee completed the training;
  - (c) The operator class or classes covered by the training;
  - (d) The name of the company providing the training; and
  - (e) For classroom and field-based training, the printed name and signature of the trainer or examiner.

### PART VIII

#### SECONDARY AND UNDER-DISPENSER CONTAINMENT REQUIREMENTS

##### NEW SECTION

- WAC 173-360-800 Purpose and applicability.** (1) This part establishes requirements for secondary containment of tanks and piping and for under-dispenser containment.
- (2) The applicability of the requirements in this part does not affect the applicability of any other requirements in this chapter.
- (3) In the event of any conflict between the provisions in this part and the other provisions in this chapter, the provisions in this part shall govern.
- (4) UST system owners and operators shall ensure compliance with the applicable requirements in this part.

##### NEW SECTION

- WAC 173-360-810 Secondary containment of tanks.**
- (1) **Applicability.** Tanks installed or replaced after October 1, 2012, must be secondarily contained and monitored for releases in accordance with the requirements in this section.
- (2) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(1), tanks must meet the secondary containment requirements in this subsection.
- (a) **Performance standards.** Tanks must be double-walled. Double-walled tanks must be designed, constructed, and installed to:
- (i) Contain any regulated substances leaking from the primary space (through the inner wall) within the interstitial space until they are detected and removed;
  - (ii) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and
  - (iii) Allow for interstitial monitoring.

- (b) **Codes of practice.** Double-walled tanks must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

- (i) Underwriters Laboratories, Standard 58, "Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids";
- (ii) Underwriters Laboratories, Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";
- (iii) Underwriters Laboratories, Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";
- (iv) Steel Tank Institute, Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
- (v) Steel Tank Institute, Specification F922, "Specification for Permatank®."

- (3) **Release detection.** Double-walled tanks must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i). Methods that continuously monitor the interstitial space using a vacuum, pressure, or a liquid must be able to detect a breach in both the inner and outer walls.

##### NEW SECTION

- WAC 173-360-820 Secondary containment of piping.**
- (1) **Applicability.** Piping installed or replaced after October 1, 2012, routinely containing regulated substances and in contact with the ground must be secondarily contained and monitored for releases in accordance with the requirements in this section. However, the requirements in this section do not apply to:
- (a) Suction piping meeting the standards in WAC 173-360-350 (2)(b)(i) through (v); or
  - (b) Piping replacing less than fifty percent of a single-walled piping run.
- (2) **Replacement of piping.** Unless otherwise approved or directed by the department, if fifty percent or more of a single-walled piping run is replaced after October 1, 2012, then the entire piping run must be replaced.
- (3) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(2), piping must meet the secondary containment requirements in this subsection.
- (a) **Performance standards.** Piping must be double-walled. Containment sumps may also be used as part of the secondary containment and interstitial monitoring system for piping.
- (i) **Piping.** Double-walled piping must be designed, constructed, and installed to:
- (A) Contain any regulated substances leaking from the primary space (through the inner wall) within the piping's interstitial space or a containment sump until they are detected and removed;
  - (B) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and

(C) Allow for interstitial monitoring within either the piping's interstitial space or a containment sump.

(ii) **Containment sumps.** Containment sumps used as part of the secondary containment and interstitial monitoring system for piping must be designed, constructed, and installed to:

(A) Be liquid-tight on its sides, bottom, and at any penetrations;

(B) Allow for visual inspection and access to the components in the sump; and

(C) Allow for interstitial monitoring of the piping. The piping's interstitial space must be exposed within the sump. Sensors must be placed within the sump where they are able to detect any leak of regulated substances.

(b) **Codes of practice.** Double-walled piping must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

(i) Underwriters Laboratories, Standard 971, "Standard for Non-metallic Underground Piping for Flammable Liquids"; or

(ii) Underwriters Laboratories, Standard 971A, "Outline of Investigation for Metallic Underground Fuel Pipe."

(4) **Release detection.** Double-walled piping must be monitored for releases using the methods specified in this subsection.

(a) Pressurized piping must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i) and be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(b) Suction piping not meeting the standards in WAC 173-360-350 (2)(b)(i) through (v) must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i).

(c) Methods that continuously monitor the interstitial space using a vacuum, pressure, or a liquid must be able to detect a breach in both the inner and outer walls.

#### NEW SECTION

**WAC 173-360-830 Under-dispenser containment.** (1) **Applicability.** UST systems connected to a dispenser must be equipped with under-dispenser containment meeting the requirements of this section if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after October 1, 2012.

(2) **Performance standards.** Under-dispenser containment must be designed, constructed, and installed to:

(a) Be liquid-tight on its sides, bottom, and at any penetrations; and

(b) Allow for visual inspection and access to the components in the containment system.

(3) **Installation and reporting.** Installation of under-dispenser containment must be:

(a) Performed by an UST supervisor certified to install UST systems under Part 6 of this chapter;

(b) Performed in accordance with the manufacturer's instructions; and

(c) Certified and reported in accordance with WAC 173-360-630 (2)(a).

#### **WSR 12-17-047**

#### **PERMANENT RULES**

#### **UTILITIES AND TRANSPORTATION**

#### **COMMISSION**

[Docket UW-120246, General Order R-566—Filed August 9, 2012, 9:42 a.m., effective September 9, 2012]

In the Matter of Amending WAC 480-110-205 and 480-110-255, relating to water companies.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 12-11-131, filed with the code reviser on May 23, 2012. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and 80.04.010 (30)(b).

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

**3 DATE OF ADOPTION:** The commission amends and adopts WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction on the date this order is entered.

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

**5** The commission amends WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction, increasing the maximum average annual revenue per customer used to determine commission jurisdiction over water companies from \$471 to \$557. The requested rule making is beneficial to, or requested or supported by, the small businesses that it affects. The proposed rules would benefit small water companies (less than one hundred customers in the aggregate). Such companies should not be subject to commission jurisdiction unless their size or average annual revenues justify regulation. The revenue figure in the existing rule no longer reflects an appropriate jurisdictional threshold, and revising that amount would be beneficial to the small water companies that the commission currently does not regulate. There are no differences between the text of the proposed rules as published in the register and the text of the rules as adopted. The commission designates the discussion in this order, including Appendix A, as its concise explanatory statement.

**6 REFERENCE TO AFFECTED RULES:** This order amends WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** In accordance with RCW 34.05.330 (1)(b),<sup>1</sup>



the commission did not file a preproposal statement of inquiry.

<sup>1</sup> RCW 34.05.330 (1)(b) states the agency may "initiate rule-making proceedings in accordance with RCW 34.05.320."

8 On November 11, 2011, MacKaye Harbor Water Company, Inc. (MacKaye), filed with the commission a petition, pursuant to RCW 34.05.330, requesting the commission initiate a rule making to amend WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction, to increase the maximum average annual revenue per customer used to determine commission jurisdiction over water companies.

9 On April 26, 2012, MacKaye filed a revised petition requesting to increase from \$471 to \$557 the maximum average annual revenue per customer a water company can generate before becoming subject to the commission jurisdiction.

10 The commission currently regulates investor-owned water companies that serve one hundred or more customers, or have average annual revenue of more than \$471 per customer. The commission entered Order 01 on May 17, 2012, granting the amended petition and directing the filing of a notice of proposed rule making (CR-102) in accordance with RCW 34.05.330 (1)(b).

11 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a CR-102 on May 23, 2012, at WSR 12-11-131. The CR-102 advised interested persons that the commission was proposing rules related to commission jurisdiction over water companies. The commission also informed persons of this proposal by providing notice of the subject and the CR-102 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated water companies. In addition, the commission issued a press release on May 25, 2012, informing the general public of the pending rule making and seeking public comment. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/120246>.

12 The commission scheduled this matter for oral comment and adoption under Notice No. WSR 12-11-131 at 1:30 p.m., Friday, July 27, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

13 **WRITTEN COMMENTS:** The commission received one comment in support of the rule making from Mr. Richard Finnigan. Mr. Finnigan stated that he works with several unregulated water systems with fewer than one hundred customers, they are all having financial difficulties, and he believes raising the threshold to \$557 will be helpful to those companies.

14 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on Friday, July 27, 2012, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from three interested persons, none of whom addressed the proposed rule itself. Two commenters suggested that the commission should on its own motion, annually update the maximum average annual revenue per customer that a water company

can generate before becoming subject to commission jurisdiction, while the other commenter expressed concerns with water regulation in general. No other interested person made oral comments.

15 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rules as proposed in the CR-102 at WSR 12-11-131.

16 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-110-205 and 480-110-255 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

#### ORDER

#### 17 THE COMMISSION ORDERS:

18 WAC 480-110-205 and 480-110-255 are amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

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

20 DATED at Olympia, Washington, August 9, 2012.

Washington Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman

Patrick J. Oshie, Commissioner

#### Appendix A

#### WAC 480-110-205 and 480-110-255 Amended Rules

**AMENDATORY SECTION** (Amending Docket No. UW-040375, General Order No. R-519, filed 4/4/05, effective 5/5/05)

**WAC 480-110-205 Application of rules.** The rules in this chapter apply to any water company that distributes, sells, or supplies water, and that meets requirements for commission regulation or jurisdiction under RCW 80.04.010 and

WAC 480-110-255 (Jurisdiction). This includes investor-owned water companies that meet the jurisdictional threshold of serving one hundred or more customers or have average revenue of more than ~~((four))~~ five hundred ~~((seventy-one))~~ fifty-seven dollars per customer per year.

**AMENDATORY SECTION** (Amending Docket No. UW-040375, General Order No. R-519, filed 4/4/05, effective 5/5/05)

**WAC 480-110-255 Jurisdiction.** (1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than ~~((four))~~ five hundred ~~((seventy-one))~~ fifty-seven dollars per customer per year.

If a water company serves customers	and has average annual revenue per customer	commission regulation
99 or less	\$ <del>((47+))</del> <u>557</u> or less	No
99 or less	more than \$ <del>((47+))</del> <u>557</u>	Yes
100 or more	\$ <del>((47+))</del> <u>557</u> or less	Yes
100 or more	more than \$ <del>((47+))</del> <u>557</u>	Yes

(2) The commission does not regulate the following providers of water service:

- (a) Cities, towns, or counties.
- (b) Public utility districts.
- (c) Water districts.
- (d) Local improvement districts.
- (e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.

(f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than ~~((four))~~ five hundred ~~((seventy-one))~~ fifty-seven dollars average annual revenue per nonmember.

(g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.

- This may include:
- (i) Apartment buildings.
  - (ii) Mobile home parks.
  - (iii) Manufactured home rental communities.
  - (iv) Office complexes.
  - (v) Commercial or industrial parks.

(3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have paid:

- (a) Water-availability letter fees.

- (b) Standby charges.
- (c) System-readiness fees.
- (d) Ready-to-serve charges.

(4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers are billed on a recurring basis, other than contributions in aid of construction. For example, this includes money billed for flat-rate service or the metered base-charge and all usage charges.

(a) The commission does not include charges billed to customers who do not receive water, such as:

- (i) Water availability letter fees.
- (ii) Standby charges.
- (iii) System-readiness fees.
- (iv) Ready-to-serve charges.

(b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:

- (i) Connection to system.
- (ii) Meter installation.
- (iii) System buy-in.
- (iv) Facilities charges.
- (v) Assessments for capital plant and equipment.

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

- (a) Select the most recent twelve consecutive months.

Example: February 2004 through January 2005.

(b) For each customer who received water service during the twelve-month period, add the amount the customer was billed by the water company for items other than contribution in aid of construction items.

Example: Customer A billed \$340.  
Customer B billed \$283.

(c) For each customer who received water service during the twelve-month period, add the number of months the customer received water service.

Example: Customer A received water service for twelve months.  
Customer B received water service for nine months.

(d) Total the amount billed the customers during the twelve-month period.

Example:

	<u>Billed by the Water Company During the Twelve-Month Period</u>
Customer A	\$340
Customer B	+ <u>\$283</u>

Total Billed During Twelve-Month Period \$623

Period" by the "Total Months Received Water Service During the Twelve-Month Period."

(e) Total the number of months each customer received water service.

Example:

		Number of Months Received Water Service During the Twelve-Month Period	
Customer A		12	
Customer B	+	<u>9</u>	
Total Months Received Water Service During the Twelve-Month Period		21	

Example:

Total Billed During the Twelve-Month Period		\$623
Total Months Received Water Service During the Twelve-Month Period	÷	<u>21</u>
Average Monthly Revenue Per Customer		\$29.67

(g) Calculate the "Average Annual Revenue Per Customer": Multiply the "Average Monthly Revenue Per Customer" times 12 months.

(A) Average Monthly Revenue Per Customer		\$29.67
Months in a Year	x	<u>12</u>
(B) Average Annual Revenue Per Customer		\$356.04

(f) Calculate the "Average Monthly Revenue Per Customer": Divide the "Total Billed During the Twelve-Month

**DATA USED IN THE EXAMPLE  
TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer A**

	<u>Standby Charge</u>	<u>Ready-to-Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No

<u>Year</u>	<u>Month</u>					<u>Total Billed</u>
2004	February				\$20	\$4
2004	March				\$20	\$5
2004	April				\$20	\$2
2004	May				\$25	\$5
2004	June				\$25	\$6
2004	July				\$25	\$12
2004	August				\$25	\$6
2004	September				\$25	\$4
2004	October				\$25	\$4
2004	November				\$25	\$3
2004	December				\$25	\$2
2005	January				<u>\$25</u>	<u>\$2</u>
		\$0	\$0	\$0	\$0	\$285
						\$55
						\$340
						12
						Not Receiving Water
						\$0
						Receiving Water - Contribution in Aid of Construction
						\$0
						Receiving Water - Other than Contribution in Aid of Construction
						<u>\$340</u>
						Total customer billed during period
						\$340

**DATA USED IN THE EXAMPLE  
TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer B**

	<u>Standby Charge</u>	<u>Ready-to- Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>	<u>Total Billed</u>	
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes		
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No		
<u>Year</u>	<u>Month</u>							
2004	February	\$7					\$7	
2004	March	\$7					\$7	
2004	April		\$12				\$12	
2004	May		\$300	\$4,500	\$25	\$5	\$4,830	
2004	June				\$25	\$4	\$29	
2004	July				\$25	\$3	\$28	
2004	August				\$25	\$12	\$37	
2004	September				\$25	\$10	\$35	
2004	October				\$25	\$15	\$40	
2004	November				\$25	\$5	\$30	
2004	December				\$25	\$2	\$27	
2005	January				<u>\$25</u>	<u>\$2</u>	<u>\$27</u>	
		<u>\$14</u>	<u>\$12</u>	<u>\$300</u>	<u>\$4,500</u>	<u>\$225</u>	<u>\$58</u>	
		Number of months service				9		
					Not Receiving Water		\$26	
					Receiving Water - Contributions in Aid of Construction		\$4,800	
					Receiving Water - Other than Contribution in Aid of Construction		<u>\$283</u>	
					Total customer billed during period		\$5,109	

(h) To ensure that all customers are treated equitably, the commission will impute the same rates to any customers receiving free or reduced service that apply to other customers receiving comparable service on the same system.

Changes Other than Editing from Proposed to Adopted Version: Added language to clarify that an absence is excused when they attend a medical appointment for an individual for whom they are legally responsible.

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

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

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

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

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

**WSR 12-17-051  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 9, 2012, 12:58 p.m., effective September 9, 2012]

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

Purpose: The purpose of this proposed rule is to establish a standard definition for absences from school in the K-12 education system. Standard definition will facilitate the collection and reporting of comparable data and the calculation of indicators as required in the PASS act.

Statutory Authority for Adoption: RCW 28A.300.046.

Adopted under notice filed as WSR 12-11-095 on May 21, 2012.

Date Adopted: June 27, 2012.

Randy Dorn  
State Superintendent

### NEW SECTION

#### **WAC 392-400-325 Statewide definition of excused and unexcused daily absences.**

##### **Excused daily absences**

The following are valid excuses for absences from school:

- (1) Participation in a district or school approved activity or instructional program;
- (2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry) for the student or person for who the student is legally responsible;
- (3) Family emergency including, but not limited to, a death or illness in the family;
- (4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
- (5) Court, judicial proceeding, or serving on a jury;
- (6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
- (7) State-recognized search and rescue activities consistent with RCW 28A.225.055;
- (8) Absence directly related to the student's homeless status;
- (9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;
- (10) Absence resulting from a disciplinary/corrective action (e.g., short-term or long-term suspension, emergency expulsion); and
- (11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

##### **Unexcused daily absences**

Any absence from school is unexcused unless it meets one of the criteria above for an excused absence.

**WSR 12-17-052**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed August 9, 2012, 3:23 p.m., effective September 9, 2012]

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

Purpose: To incorporate a reference to a reasonably available control technology (RACT) fee schedule under NWCAA 324. Also to update the effectiveness dates under NWCAA 104 to ensure the most recent versions of the referenced regulations are adopted, and to adopt the National Emission Standards for Hazardous Air Pollutants for Iron and

Steel Foundries Area Sources under 40 C.F.R. 63 Subpart ZZZZZ by reference.

Citation of Existing Rules Affected by this Order: Amending Sections 104 and 324 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-14-113 on July 18 [5], 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: August 9, 2012.

Mark Buford  
Assistant Director

### AMENDATORY SECTION

Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of July 18, 2012 (~~October 19, 2011~~), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedures Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - -035, -036, -070(8), -075, -099, -100, -101, -102, -103, -104, -105(8), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of July 18, 2012 (~~October 19, 2011~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW,

XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, YYYYY, ZZZZZ, CCCCC, EEEEE, FFFFF, GGGGG, MMMMM, NNNNN, SSSSS, VVVVV; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

### SECTION 324 - FEES

#### 324.1 Annual Registration Fees

~~((a))~~(A) The NWCAA shall levy annual registration program fees as set forth in Section 324.1~~((e))~~(C) to cover the costs of administering the registration program.

~~((b))~~(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of twenty-five percent (25%) of the registration fee for failure to pay the registration fee within thirty (30) days after the due date. The late penalty shall be in addition to the registration fee.

~~((e))~~(C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request

such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

#### 324.2 New Source Review Fees

~~((a))~~(A) New source fees shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

~~((b))~~(B) The applicable fee(s) shall be established in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA. A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It

shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012

### WSR 12-17-053

#### PERMANENT RULES

#### BOARD OF ACCOUNTANCY

[Filed August 10, 2012, 7:45 a.m., effective September 10, 2012]

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

Purpose: (1) To allow additional continuing professional education (CPE) credit for volunteer service on the board, on board committees, or on board approved peer review committees to include credit for time preparing for committee meetings.

(2) To clarify the definition of interactive self-study programs.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-132 What are the program standards for CPE?

Statutory Authority for Adoption: RCW 18.04.055(7), 18.04.215(5).

Adopted under notice filed as WSR 12-13-102 on June 20, 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 1, Repealed 0.

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

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

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

Date Adopted: July 26, 2012.

Richard C. Sweeney, CPA  
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-132 What are the program standards for CPE?** (1) **Qualifying program:** A program qualifies as acceptable CPE for purposes of RCW 18.04.215(5) if it is a formal program of learning which contributes to the CPA's professional knowledge and competence. A formal program means:

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

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

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

(4) **CPE credit hours for volunteer service on the board and its committees and volunteer service on board approved peer review committees:** You may receive up to ~~(thirty-two)~~ sixty-four hours of technical CPE credit each calendar year for actual time spent on board, board committee, or board approved peer review committee activities including actual time you spend preparing for committee meetings.

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

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

**(b) Nontechnical subjects include:**

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

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

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

- (a) Professional education and development programs of national, state, and local accounting organizations;
- (b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters;
- (c) Formal in-firm education programs;
- (d) Programs of other organizations (accounting, industrial, professional, etc.);
- (e) Dinner, luncheon, and breakfast meetings which are structured as formal educational programs;
- (f) Firm meetings for staff and/or management groups structured as formal education programs. Portions of such meetings devoted to communication and application of general professional policy or procedure may qualify, but portions devoted to firm administrative, financial and operating matters generally will not qualify.

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

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

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

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

**(a) Interactive self-study programs:** Interactive means electronic or other delivery formats for delivery of CPE in which feedback is provided during the study of the material

in a manner to validate the individual's understanding of the material. The amount of credit allowed for interactive self-study is that which is recommended by the program sponsor on the basis of the average completion time under appropriate "field tests." In order to claim CPE credit for interactive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor. Self-study CPE courses registered with the National Association of State Boards of Accountancy (NASBA) as a Quality Assurance Service (QAS) sponsor may be accepted as interactive.

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

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

**(10) Published articles, books:** You may claim CPE credit for published articles and books, provided they contribute to your professional competence. Credit for preparation of such publications may be claimed on a self-declaration basis for up to thirty hours in a CPE reporting period. In exceptional circumstances, you may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that justify a greater credit. The amount of credit awarded for a given publication will be determined by the board.

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

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

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



**WSR 12-17-054**  
**PERMANENT RULES**  
**BOARD OF ACCOUNTANCY**

[Filed August 10, 2012, 8:05 a.m., effective September 10, 2012]

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

Purpose: To require all CPA firms that issue any attestation or compilation reports on financial statements to participate in a board approved peer review program.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-130 What are the requirements for participating in quality assurance review (QAR)?

Statutory Authority for Adoption: RCW 18.04.055(9).

Adopted under notice filed as WSR 12-13-103 on June 20, 2012.

Changes Other than Editing from Proposed to Adopted Version: Changed proposed language in subsection (4)(b) as follows:

1. Eliminated the language "receives a peer review grade of 'fail' or 'pass with comments' or";
2. Changed "rejected[" to "dropped"
3. Changed "rejection" to "drop."

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: July 26, 2012.

Richard C. Sweeney, CPA  
 Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-130 What are the ((requirements for participating in)) quality assurance review (QAR) requirements for licensed CPA firms?** (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with audit, compilation, review, and other attestation standards.

(2) **Peer review.** Generally, all licensed firms offering and/or performing attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards

in Washington state, are required to participate in a board-approved peer review program as a condition of renewing each CPA firm license under RCW 18.04.215 and WAC 4-30-114. However, certain exemptions are listed in subsection (1) of this section. Board-approved peer review programs include:

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

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

(c) Peer review programs administered by the Washington Society of CPAs (WSCPA); and

(d) Other programs recognized and approved by the board.

(3) **Enrollment in peer review:** A licensed firm must enroll in a board-approved peer review program **before** issuing a report for each of the following types of service or any other service the board determines:

(a) Compilation on historical financial statements;

(b) Review on historical financial statements;

(c) Audit report on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises;

(d) Agreed-upon procedures;

(e) Forecasts; and

(f) Projections.

The schedule for the firm's peer review shall be established according to the peer review program's standards. The board does not require any licensee to become a member of any organization administering a peer review program.

(4) **Participation in peer review.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is dropped or terminated by a peer review program for any reason shall have twenty-one days to provide written notice to the board of such termination or drop and to request authorization from the board to enroll in another board-approved peer review program.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the peer review program shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

(5) **Reporting requirements.** Every firm must provide the following information, along with the appropriate fees, with every application for renewal of a firm license by April 30th of the year of expiration that may consist of but is not limited to:

(a) Certify whether the firm does or does not perform attest services or compilation services as defined by WAC 4-30-010 (5), (12), or other professional services for which a

report expressing assurance is prescribed by professional standards in Washington state:

(b) If the firm is subject to the peer review requirements, provide the name of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review:

(c) Certify the result of the firm's most recent peer review.

Failure to timely submit complete information and the related fee by the April 30th due date can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(6) Documents required. A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program shall provide to the board copies of the following documents related to the peer review report:

(a) Peer review report issued;

(b) Firm's letter of response, if any;

(c) Letter of acceptance from peer review program;

(d) Recommended action letter from the peer review program, if any;

(e) A letter from the firm to the board describing corrective actions taken by the firm that relate to recommendations of the peer review program;

(f) Other information the firm deems important for the board's understanding of the information submitted; and

(g) Other information the board deems important for the understanding of the information submitted.

(7) Document retention. Firms shall retain all documents relating to peer review reports, including working papers of the underlying engagement subject to peer review that was reviewed, until the acceptance of a subsequent peer review by the peer review program or for five years from the date of acceptance of the peer review by the peer review program, whichever is sooner.

(8) Extensions. The board may grant an extension of time for submission of the peer review report to the board. Extensions will be determined by the board on a case-by-case basis.

(9) Verification. The board may verify the certifications of peer review reports that firms provide.

(10) Exemption from peer review.

(a) Out-of-state firms that do not have a physical location in this state, but perform attest or compilation services in this state, and are otherwise qualified for practice privileges under RCW 18.04.195 (1)(b) are not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

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

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

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

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

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

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

~~(4) Process.~~

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

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

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

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

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

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

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

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

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

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

~~(i) Compilation report on historical financial statements;~~

~~(ii) Review report on historical financial statements;~~

~~(iii) Agreed-upon procedures;~~

~~(iv) Forecasts; and~~

~~(v) Projections.~~

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

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

last twelve months, from all reports during the preceding three years:

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

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

(i) Reports submitted to the committee pursuant to (d) of this subsection and comments of reviewers, the committee and the board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the board to the licensees who issued the reports or disclosure is required under administrative procedure rules or by direction of a court of law.

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

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

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

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

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

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

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

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

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

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

investigative efforts substantiate the existence of substandard work product;

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

(6)) (b) Firms that do not perform attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state are not required to participate in a peer review program, and shall request exemption on each firm license renewal application.

(c) Firms that prepare financial statements **which do not require reports** under Statements on Standards for Accounting and Review Services (SSARS) 8 as codified in SSARS 19 (management use only compilation reports) and that perform no other attest or compilation services, are not required to participate in a peer review program; however, such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(11) **Quality assurance oversight.**

(a) The board will:

(i) Annually appoint a compliance assurance oversight committee, and such other committees as the board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews;

(ii) Consider reports from the compliance assurance oversight committee;

(iii) Direct the evaluation of peer review reports and related documents submitted by firms;

(iv) Determine the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements;

(v) Determine appropriate action for firms when issues with a peer review report may warrant further action; and

(vi) Take appropriate actions the board, in its discretion, deems appropriate to carry out the functions of the quality assurance review program and achieve the purpose of the peer review requirement.

(b) The **compliance assurance oversight committee** shall conduct oversight of approved peer review programs at least semiannually to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews.

(i) The compliance assurance oversight committee's oversight procedures may consist of but are not limited to:

(A) Attending the peer review program's report acceptance body (RAB) meetings during consideration of peer review documents;

(B) Observing the peer review program administrator's internal review of program and quality control compliance.

(C) Observing the peer review program's review of the administrator's process.

(ii) The compliance oversight assurance committee shall report to the board any modifications to approved peer

review programs and shall make recommendations regarding the continued approval of peer review programs.

(12) Remedies. The board's quality assurance review program is intended to monitor the quality of a firm's attest and compilation practices and compliance with professional standards (RCW 18.04.065(9)). If the board determines that a firm's attest or compilation engagement performance and/or reporting practices are not in accordance with applicable professional standards and, therefore, the board determines that one or more of the engagements are, or could be, substandard or seriously questionable, the board will take appropriate action to protect the public interest including, but not limited to:

(a) Require the firm to develop quality control procedures to provide reasonable assurance that similar occurrences will not occur in the future;

(b) Require any individual licensee who had responsibility for, or who substantially participated in the substandard or seriously questionable compilation or attest engagement(s), to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the reviewed firm responsible for one or more substandard or seriously questionable compilation or attest engagement(s) submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a board-approved licensee in a manner and for a duration prescribed by the board. Prior to the firm issuing the reports on the engagements reviewed, the board-approved licensee shall submit to the board for board acceptance a report of the findings, including the nature and frequency of recommended actions to the firm. The cost of the board-approved preissuance evaluation will be at the firm's expense;

(d) Require the reviewed firm to engage a board-approved licensee to conduct a board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the degree or pervasiveness of substandard or seriously questionable work product. The board-approved licensee engaged by the firm shall submit a report of the findings to the board within thirty days of the completion of the services. The cost of the board-prescribed on-site review or other board-prescribed procedures will be at the firm's expense; or

(e) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320; and

(f) The specific rating of a peer review report, individually, is not a sufficient basis to warrant disciplinary action.

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

## WSR 12-17-059

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed August 10, 2012, 1:34 p.m., effective September 10, 2012]

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

Purpose: To create guidelines for driver training schools (DTS) to administer knowledge and driving examinations.

By creating rules there will be a clear understanding of the requirements to administer examinations. This will establish procedures to be in compliance with the terms of the agreements between the department of licensing and DTS. The anticipated effect will be that wait times in the LSOs will be reduced and provide customers the flexibility to obtain a license examination at a DTS.

Creates new chapter 308-110 WAC, to define terms, set requirements for the establishment of agreements to administer knowledge and skills tests, set standards for the administration of examinations and examiners, set record-keeping requirements, provides for inspections and audits, and imposes sanctions for violations. Makes a conforming amendment related to classroom use in WAC 308-108-100 and clarifies language in that section.

Citation of Existing Rules Affected by this Order:  
Amending WAC 308-108-100.

Statutory Authority for Adoption: RCW 46.01.110, 46.82.450.

Adopted under notice filed as WSR 12-12-073 on June 6, 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 6, 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 6, 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: August 10, 2012.

Damon Monroe  
Rules Coordinator

## Chapter 308-110 WAC

### Administration of Knowledge and Skills Testing by Driver Training Schools

#### NEW SECTION

**WAC 308-110-010 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

(1) "Agreement" means a written agreement entered into between the department and a school for the purposes of RCW 46.82.450.

(2) "Applicant" means a person taking an examination administered by an examiner to qualify for a Washington driver's license.

(3) "Examinations" mean the tests that meet the department's criteria to assess an applicant's knowledge and skills to operate a motor vehicle.

(4) "Examiner" means a driver training instructor licensed under chapter 46.82 RCW, who has been approved by the department as meeting department qualifications, education, and training standards for administering examinations.

(5) "Knowledge test" means a written or electronically delivered test that measures the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

(6) "School" means a driver training school licensed under chapter 46.82 RCW.

(7) "Skills test" means a demonstration of behind-the-wheel driving that measures the applicant's ability to safely operate a motor vehicle on the roadways without endangering the public or property.

#### NEW SECTION

**WAC 308-110-020 Agreements—Establishment—Requirements.** The department may enter into an agreement to conduct examinations with a school that:

(1) Is currently licensed under chapter 46.82 RCW to provide driver training instruction;

(2) Complies with chapters 18.235 and 46.82 RCW and regulations adopted under those chapters;

(3) Has submitted a request to enter into an agreement on a form or in a format prescribed by the department; and

(4) Has provided to the department:

(a) A list of examiners the school intends to use to administer examinations;

(b) A description of the school's examination practices that includes, but may not be limited to, a school's skills test route(s) and test starting point(s);

(c) A summary of the school's schedule for administering examinations;

(d) A school's knowledge test questions; and

(e) Any other information as may be required by the department.

#### NEW SECTION

**WAC 308-110-030 Administration of examinations.**

(1) Schools and examiners must conduct skills tests using routes that meet department standards.

(2) Knowledge test questions must be supplied by the department or meet department criteria.

(3) Knowledge tests must be conducted in an area separate from classroom instruction or when a class is not in session, minimizing distractions or interactions.

(4) Examinations must be conducted by examiners.

(5) Knowledge test results may be used to obtain a driver license for no more than two years from the date of completion.

(6) Skills test results may be used to obtain a driver license for no more than one year from the date of completion.

(7) In accordance with the department's guidelines, schools must refer to the department for testing any applicant who has a condition that may impair their ability to operate a motor vehicle safely.

(8) Prior to administering the knowledge and skills tests, schools must ensure that applicants are at least fifteen years

of age. When the applicant is less than eighteen years of age, the applicant must have successfully completed a traffic safety education course.

(9) Prior to administering the skills test, schools will ensure that applicants are properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures.

(10) Applicants must possess one of the following to participate in the skills testing portion of the examination:

(a) A Washington instruction permit issued under RCW 46.20.055;

(b) A temporary authorization to drive issued on a form prescribed by the department; or

(c) A valid foreign driver's license.

#### NEW SECTION

**WAC 308-110-040 Applicant records, recordkeeping and reporting.** (1) Schools must keep applicant records for at least three years. Applicant records must be kept at a school's primary place of business. Records must be immediately available for inspection or audit by the department or its representative.

(2) Schools must keep applicant records on a form or in a format approved by the department. The form must include at least the:

(a) Applicant name, date of birth, and driver's license or instruction permit number;

(b) Knowledge and skill test results;

(c) Examiner's name(s), instructor license number(s), and signature(s);

(d) Dates and times the examinations were administered to the applicant; and

(e) Other information required by the department.

(3) Schools must submit to the department the knowledge and skills test results for each applicant in accordance with the school's agreement with the department.

(4) The department will monitor outcomes for applicants who take a driver's license examination and will make aggregate outcomes available to the public.

#### NEW SECTION

**WAC 308-110-050 Inspection and audit.** The department or its representative may conduct examinations, inspections, and audits of school and applicant records, facilities, and operations at any time during regular business hours in order to ensure compliance with the requirements of chapter 46.82 RCW, the rules promulgated under this chapter, and the agreement.

#### NEW SECTION

**WAC 308-110-060 Violations—Impact on agreement.** (1) Schools and examiners are responsible for complying with the requirements of chapters 46.82 and 18.235 RCW and the rules promulgated under those chapters.

(2) If the department finds that an examiner or school has violated or no longer meets the qualifications or requirements of chapters 46.82 and 18.235 RCW, the rules promulgated

under those chapters, or the agreement; the department may either (a) rescind approval of an examiner to conduct examinations, (b) terminate or suspend for any period of time an agreement with a school, or both.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06, effective 1/18/07)

**WAC 308-108-100 Place of business—Classroom space.** (1) The place of business of a driver training school must:

(a) ~~((Shall))~~ Not be established nor any business of a driver training school conducted or solicited within one thousand feet of an office building owned or leased by the department of licensing in which examinations for driver's licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building. If the department establishes an office in which examinations for driver's licenses are conducted within one thousand feet of a driver training school's existing location, the driver training school may continue operations in such location until there is a change in school ownership, or the license to operate is not renewed or is suspended or revoked for cause.

(b) ~~((Shall))~~ Be regularly occupied and used exclusively for the business of giving driver instruction, except for purposes of administering examinations as may be permitted under chapter 308-110 WAC. Regularly occupied means that the public and the department can expect to make contact with the school owner or its staff or instructors at the main office during its business hours; and

(c) ~~((Shall))~~ Meet all applicable requirements of chapter 46.82 RCW.

(2) A driver training school's classroom space ~~((shall))~~ must:

(a) Provide sufficient seating and table or desk space for all students enrolled in each class;

(b) Be properly equipped with all other equipment necessary for student training and instruction purposes; and

(c) ~~((Use))~~ Be separated from the business office by using walls, partitions, or ~~((separate))~~ alternate scheduling ~~((of classroom and office activities if the classroom shares a single space with the driver training school office in order to mitigate student distraction or disruption of the instruction))~~ when a school must use one space for both activities.

### WSR 12-17-061

#### PERMANENT RULES

#### HORSE RACING COMMISSION

[Filed August 10, 2012, 3:39 p.m., effective September 10, 2012]

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

Purpose: Allows the board of stewards or executive secretary to declare a horse permanently retired for racing purposes.

Citation of Existing Rules Affected by this Order: Amending WAC 260-40-145 Prohibited entry of certain horses.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-14-007 on June 21, 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 1, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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: August 10, 2012.

Douglas L. Moore  
Deputy Secretary

#### NEW SECTION

**WAC 260-28-095 Retirement of a horse.** At any time an owner or group of owners may decide to retire a horse from racing due to injury, age, or other physiological or behavioral condition(s) that may cause harm to the horse or others if the horse returns to training or racing. The owner(s) who wish to retire a horse can notify the board of stewards, or during their absence the executive secretary. The board of stewards or executive secretary will conduct a ruling conference. At the time of the conference, the owner(s) will present evidence to support the reasons for retirement from applicable professionals; for example, a statement from a licensed veterinarian noting the horse has a condition which makes it unsafe to continue racing in the future. If the stewards or executive secretary issues a ruling declaring the horse "retired" the horse will not be eligible for racing. The owner(s), and any new owner(s) if the retirement is concurrent with a sale or transfer of ownership, will be served a copy of the ruling. All horses retired will be placed permanently on the steward's list as provided in WAC 260-24-510(9). Once a horse is retired it will remain retired and ineligible for racing.

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

**WAC 260-40-145 Prohibiting entry of certain horses.** (1) No horse will be allowed to enter or start if it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo or other identification method approved by the appropriate breed registry and the commission.

(2) No horse may be allowed to enter or start if its owner, lessor(s), or trainers have not been licensed as required by the commission.

(3) No horse may be allowed to enter or start if the horse has been declared "retired" as provided in WAC 260-28-095.

**WSR 12-17-075**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed August 14, 2012, 11:24 a.m., effective September 14, 2012]

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

Purpose: Amend WAC 308-104-004 to add definitions for the terms "notice" and "order." These terms are defined as being interchangeable for purposes of sending written notices imposing driver's license suspensions, revocations, denials, cancellations, and disqualification of a person from operating a commercial motor vehicle. This clarification may help avoid potential confusion for drivers receiving notice from the department.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-004.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.245.

Adopted under notice filed as WSR 12-13-055 on June 15, 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 1, Repealed 0.

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

Date Adopted: August 14, 2012.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-069, filed 9/1/00, effective 10/2/00)

**WAC 308-104-004 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

(1) "Examination," for purposes of RCW 46.20.305, means any one or combination of the following:

(a) A medical certificate to be completed by a competent medical authority;

(b) A vision certificate to be completed by a competent vision authority such as an optometrist or ophthalmologist;

(c) A psychiatric evaluation by a competent authority;

(d) An alcohol or drug evaluation or report of progress in alcohol or drug treatment from an alcohol or drug treatment agency approved by the department of social and health services;

(e) A reexamination of knowledge and driving ability conducted by a licensing services representative;

(f) A special examination of knowledge and driving ability conducted by a licensing services representative;

(2) "Jurisdiction" means a state, territory, or possession of the United States; the District of Columbia; or a province of Canada;

(3) "Military personnel" means active members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned officers of the Public Health Service, and members of foreign military organizations assigned to this state on official duty. For purposes of this section, a person in the reserves will not be considered an "active member" unless he or she has been called to active duty for a period exceeding the full period specified for license expiration in RCW 46.20.181;

(4) "Notice" and "order", when used in relation to driver's license suspensions, revocations, denials, and cancellations, and in relation to the disqualification of a person from operating a commercial motor vehicle, may be interchangeable and mean the written notice given by the department to a person under the provisions of RCW 46.20.245 or other law;

(5) "State" means a state of the United States, the District of Columbia, or a United States territory or possession.

**WSR 12-17-076**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed August 14, 2012, 11:51 a.m., effective September 14, 2012]

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

Purpose: Incorporate statutory changes made in 2SHB 2443 (2012) involving the ignition interlock device revolving account.

- Amends WAC 308-107-050 to require that drivers who are subject to a mandatory restriction to operate motor vehicles equipped with an ignition interlock device under RCW 46.20.720 must pay twenty dollars a month into the ignition interlock device revolving account. Makes additional conforming amendments for this requirement.
- Amends WAC 308-107-060 to permit indigent drivers subject to a mandatory restriction to operate motor vehicles equipped with an ignition interlock device under RCW 46.20.720 to apply for an[d] receive monetary assistance from the ignition interlock device revolving account. Makes additional conforming amendments for this section.

Citation of Existing Rules Affected by this Order: Amending WAC 308-107-050 and 308-107-060.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.385.

Other Authority: RCW 46.20.720.

Adopted under notice filed as WSR 12-13-054 on June 15, 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 2, Repealed 0.

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

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

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

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

Date Adopted: August 14, 2012.

Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-01-037, filed 12/6/10, effective 1/6/11)

**WAC 308-107-050 Ignition interlock device revolving account.** (1)(a) As required under RCW 46.20.385 (6)(a), unless determined by the department to be indigent under WAC 308-107-060, a person who is applying for or has been issued an ignition interlock driver's license, or (b) a person who is restricted under RCW 46.20.720, must pay an additional fee of twenty dollars per month or partial month for which the ignition interlock driver's license is valid or an ignition interlock device is installed to the manufacturer of the device(s) installed in the motor vehicle(s) driven by the person. Payment may be made directly to the manufacturer, or through the authorized service provider, depending upon the manufacturer's business practices.

(2) A manufacturer providing devices to persons who are ~~((applying for or have been issued))~~ required to have an ignition interlock ~~((driver's license))~~ device, either directly or through an authorized service provider, must enter into an agreement with the department for the collection and transmittal of the twenty dollar monthly fee required under RCW 46.20.385 (6)(a) or 46.20.720(6). Any agreement made under this section must include appropriate reporting requirements and accounting practices to permit the department to audit the handling of the fees that must be remitted to the department. The department may terminate an agreement with a manufacturer upon a showing of good cause. Good cause may include, but not be limited to;

- (a) Violation of the agreement;
- (b) Violation of the laws and rules governing the installation of devices; or
- (c) Violation of this chapter.

An agreement between the department and a manufacturer will be valid for no more than four years, provided that the department may extend an agreement for up to an additional four years at its discretion.

(3) As provided by RCW 46.20.385 (6)(b) and 46.20.720(6), the department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account.

**AMENDATORY SECTION** (Amending WSR 08-24-059, filed 11/26/08, effective 1/1/09)

**WAC 308-107-060 Indigence—Monetary assistance—Determination of need.** (1) ~~((An applicant for, or~~

~~holder of, an ignition interlock driver's license))~~ (a) A person who is required to have an ignition interlock device may apply to the department for a determination that he or she is indigent for purposes of RCW 46.20.385 and 46.20.745. The department will determine that a person is indigent if the person is:

~~((a))~~ (i) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or Supplemental Security Income; or

~~((b))~~ (ii) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

(b) In making a determination of indigence under this subsection, the department may request that the applicant provide records or other evidence of public assistance, income, payment of taxes, or other relevant issues.

(c) A person who has been determined to be indigent under this subsection is:

(i) Exempt from paying the additional fee of twenty dollars required under RCW 46.20.385 (6)(a)(-); and

(ii) May apply for monetary assistance under subsection (2) of this section.

(2) Subject to appropriation by the legislature of funds from the ignition interlock device revolving account and the availability of funds in the ignition interlock device revolving account, a person who has been determined to be indigent under this section may apply to the department for monetary assistance in covering the costs of installing, removing, and leasing an ignition interlock device, and any applicable licensing fees.

(3) Subject to funds appropriated, the department may base the amount of monetary assistance provided to an applicant under subsection (2) of this section on a determination of need. Where possible, a determination of need may be based on such factors as:

(a) Total number of persons in household, including the number of dependants;

(b) The age of the applicant and whether the applicant is a dependant of another person;

(c) Monthly expenses; and

(d) Liquid assets.

(4) A person who has been determined to be indigent under this section must re-apply for a determination of indigence on an annual basis.

**WSR 12-17-087**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 15, 2012, 2:14 p.m., effective September 15, 2012]

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

Purpose: The department is proposing to amend WAC 388-492-0110 and 388-492-0120 to correct references to



other rules regarding eligibility for Basic Food and WASHCAP. These changes are necessary to cross-reference rules necessary to maintain federally authorized programs regarding the allowable use of supplemental nutrition assistance program (SNAP) benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0110 and 388-492-0120.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.08.090, 74.08A.903.

Other Authority: 7 C.F.R. §273.1 and §273.16.

Adopted under notice filed as WSR 12-13-077 on June 19, 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 2, 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 2, Repealed 0.

Date Adopted: August 14, 2012.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

**WAC 388-492-0110 What happens if my WASHCAP food benefits end?** (1) If your WASHCAP food benefits end because you did not have the review required under WAC 388-492-0100, you must finish the required review or apply for Basic Food benefits:

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services (HCS) office;

or

(e) At any Social Security Administration (SSA) office.

(2) If your WASHCAP benefits end because you are disqualified under WAC 388-400-0040 (~~((14)(b))~~) (12)(b) or (e), you are not eligible for Basic Food benefits and:

(a) If you get medical assistance, we will send your medical assistance case to your local office;

(b) If you are a HCS client, your medical case will remain at HCS.

(3) If your WASHCAP benefits end for any other reason:

(a) We will send you an application for Basic Food benefits along with the address of your local CSO. If you are an HCS client, your case will remain at your HCS office.

(b) For the local CSO to decide if you are eligible for Basic Food benefits, you must:

(i) Finish the application process for Basic Food benefits under chapter 388-406 WAC; and

(ii) Have an interview for Basic Food benefits under WAC 388-452-0005.

(c) If you get medical assistance, we will send your medical case to the local CSO unless you are an HCS client;

(d) If your WASHCAP benefits closed because SSA ended your SSI, you will still receive the same medical benefits until we decide what medical program you are eligible for under WAC 388-418-0025.

**AMENDATORY SECTION** (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

**WAC 388-492-0120 What happens to my WASHCAP benefits if I am disqualified?** (1) If you are disqualified from receiving SSI for any reason, you will not be able to get WASHCAP benefits. See WAC 388-492-0030, Who can get WASHCAP?

(2) If you are disqualified from receiving Basic Food for any reason, you will not get WASHCAP food benefits. This includes clients who:

(a) Are ineligible under WAC 388-400-0040 (~~((14)(b))~~) (12)(b) and (e) and 388-442-0010; or

(b) Did not cooperate with quality assurance as required under WAC 388-464-0001.

## WSR 12-17-102

### PERMANENT RULES

#### DEPARTMENT OF HEALTH

[Filed August 17, 2012, 1:42 p.m., effective September 17, 2012]

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

Purpose: WAC 246-260-010, 246-260-031, 246-260-081, 246-262-010, 246-262-060, and 246-262-130 adopt the recently adopted federal drain cover design standards for pools and spas. The primary changes in the new standard are the title and issuing organization. In addition, limited editorial changes are adopted to improve clarity. The revisions eliminate confusion and improve statewide consistency in plan review and approval by the department of health and local health jurisdictions.

Citation of Existing Rules Affected by this Order: Amending WAC 246-260-010, 246-260-031, 246-260-081, 246-262-010, 246-262-060, and 246-262-130.

Statutory Authority for Adoption: RCW 70.90.120.

Other Authority: RCW 70.90.120.

Adopted under notice filed as WSR 12-11-113 on May 22, 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 6, 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 6, Repealed 0.

Date Adopted: August 17, 2012.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

**WAC 246-260-010 Definitions, abbreviations, and acronyms.** The definitions in this section apply throughout this chapter unless the context clearly ((requires)) indicates otherwise.

- (1) ("Abbreviations" (technical):  
 "CPR" means cardiopulmonary resuscitation;  
 "DE" means diatomaceous earth;  
 "F" means Fahrenheit;  
 "fps" means feet per second;  
 "gpm" means gallons per minute;  
 "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available;  
 "ppm" means parts per million. See notation under mg/l for use;  
 "TU" means turbidity unit as measured by the nephelometric method.
- (2) Aeronyms:  
 (a) "ALTI" means Advanced Lifeguard Training International;  
 (b) "ANSI" means American National Standards Institute;  
 (c) "APHA" means American Public Health Association;  
 (d) "ARC" means American Red Cross;  
 (e) "ASA" means American Standards Association;  
 (f) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers;  
 (g) "ASME" means American Society of Mechanical Engineers;  
 (h) "ASTM" means American Society for Testing and Materials;  
 (i) "AWWA" means American Waterworks Association;  
 (j) "E&A" means Ellis and Associates;  
 (k) "CPSC" means U.S. Consumer Product Safety Commission;  
 (l) "EPA" means U.S. Environmental Protection Agency;  
 (m) "FINA" means Federation Internationale de Natation Amateur;  
 (n) "IAPMO" means International Association of Plumbing and Mechanical Officials;  
 (o) "NAUI" means National Association of Underwater Instructors;  
 (p) "NSF" means National Sanitation Foundation;

- (q) "NSPI" means National Spa and Pool Institute;  
 (r) "PADI" means Professional Association of Diving Instructors;  
 (s) "UBC" means Uniform Building Code;  
 (t) "UL" means Underwriters' Laboratories;  
 (u) "WRF" means water recreation facility;  
 (v) "WRPA" means Washington Recreation and Parks Association;  
 (w) "WSDA" means Washington state department of agriculture; and  
 (x) "YMCA" means Young Men's Christian Association.
- (3) Definitions:  
 "Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:  
 (a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;  
 (b) Suction limiting vent system with a tamper resistant atmospheric opening;  
 (c) Gravity drainage system that utilizes a collector or balancing tank; and  
 (d) Drain disablement that eliminates the use of suction outlets.) "ALTI" means Advanced Lifeguard Training International.  
 (2) "ANSI" means American National Standards Institute.  
 (3) "APHA" means American Public Health association.  
 (4) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with this chapter.  
 (5) "APSP" means Association of Pool and Spa Professionals.  
 (6) "ARC" means American Red Cross.  
 (7) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.  
 ("ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda.)  
 (8) "ASA" means American Standards Association.  
 (9) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers.  
 (10) "ASTM" means American Society for Testing and Materials.  
 (11) "Attendant" means a person appointed by the owner or manager meeting the training requirements of this chapter who monitors activities and conditions for the purpose of ensuring bather safety.  
 (12) "AWWA" means American Waterworks Association.  
 (13) "Bathing beach" means a bathing place, together with buildings and appurtenances, on a natural pond, lake, stream, or other body of fresh or salt water that is open to the public for bathing by express permission of the owner, oper-

ated for a fee, or openly advertised as a place for bathing by the public.

(14) "Board" means the state board of health.

(15) "Branch line" means suction piping between a junction fitting and a suction outlet.

(16) "Commercial strength ammonia" means ammonia having a strength of twenty-six degrees Baume(°).

(17) "Communication system" means any combination of devices permitting the passage of messages between personnel and/or personnel and bathers. Systems can include but are not limited to two-way radios, hard wired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

(18) "Contaminant" means any physical, chemical, or biological substance present in the WRF water which may adversely affect the health or safety of the bather or the quality of the water.

(19) "CPR" means cardiopulmonary resuscitation.

(20) "CPSC" means U.S. Consumer Product Safety Commission.

(21) "Cross-connection" means any physical arrangement connecting:

(a) Potable water system directly or indirectly, with anything other than another potable water system; or

(b) WRF pool to any water source capable of contaminating either the WRF pool, its components, or potable water source as a result of backflow.

(22) "DE" means diatomaceous earth.

(23) "Department" means the Washington state department of health.

(24) "Deep water" means water greater than five feet in depth.

(25) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or pool decking intended for users to dive.

(26) "E&A" means Ellis and Associates.

(27) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW.

(28) "EPA" means U.S. Environmental Protection Agency.

(29) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

(30) "F" means Fahrenheit.

(31) "Fall zones" mean the areas under and around play toys where a person playing on them could fall. These areas should be free of obstacles or other equipment so that there's plenty of room. Basic guidelines include the following:

(a) Fall zones should extend a minimum of six feet in all directions from the perimeter of the play toy equipment.

(b) If the height of an adjacent play toy is thirty inches or more, the minimum distance between pieces of play equipment should be at least nine feet.

(32) "FINA" means Federation Internationale de Natation Amateur.

(33) "fps" means feet per second.

(34) "General use pool" means any swimming, spa, wading, or spray pool regulated by this chapter not meeting the definition of a "limited use pool."

(35) "gpm" means gallons per minute.

(36) "Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

(37) "IAPMO" means International Association of Plumbing and Mechanical Officials.

(38) "Illness or injury report" means the written record of all facts regarding an injury or illness associated with the WRF.

(39) "Innovative design feature" means a design feature, equipment, device, or operative procedure not specifically covered by these rules or chapter 246-262 WAC.

(40) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

(41) "Licensed medical practitioner" includes medical doctor, osteopath, chiropractor, naturopath, and medical therapist currently licensed in Washington state.

(42) "Lifeguard" means a person meeting the training requirements of these rules appointed by the owner or manager to maintain surveillance over the bathers on the deck or in the pool and to supervise bather safety.

(43) "Lifeguard station" means designated work station of a lifeguard.

(44) "Lifesaving equipment" means emergency equipment and barrier protection.

(45) "Lifesaving Society" means the organization in Canada that establishes training requirements and standards for lifeguard training.

(46) "Limited use pool" means:

(a) Any swimming, spa, wading, or spray pool regulated by this chapter at an apartment, boarding home, condominium, fraternity, home owners association, hotel, mobile home park, motel, recreational vehicle park, sorority or rental housing unit for the use of the persons living or residing at the facility and their resident's invited guests.

(b) When organized programs are provided at the facility (including, but not limited to, formal swimming or diving lessons, swim meets, or exercise classes), for users besides those specified under the limited use category, the pool facility shall be considered to be a general use pool during periods of such activity.

(47) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(48) "Main drain" means a submerged suction outlet for transferring water from a swimming pool, spa pool, or wading pool.

(49) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.

(50) "NAUI" means National Association of Underwater Instructors.

(51) "NSF" means National Sanitation Foundation.

(52) "NSPI" means National Spa and Pool Institute.

(53) "Outlet drain" means a drain for transferring water from a spray pool.

(54) "Owner" means a person owning and responsible for a WRF or their authorized agent.

(55) "PADI" means Professional Association of Diving Instructors.

(56) "Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.

(57) "Physical plant" refers to pool shell, piping, lighting, ventilation, locker rooms, chemical storage rooms, mechanical rooms, or other structural facility components that are not readily modified. It does not include pumps, filters or disinfection systems.

(58) "Play toy" is a water feature added to a pool for use by bathers that provides activity or action that enhances the overall use of the water environment. Such feature may include, but not be limited to, fixed stationary features, inflatable or floatable equipment, or other equipment with the intent to invite bathers to play on or around the feature.

(59) "Pool" means swimming pool, wading pool, spray pool, or spa pool or the like.

(60) "ppm" means parts per million. See notation under mg/l for use.

(61) "Private club" means a group or organization requiring membership enrollment.

(62) "Radius of curvature" means the radius arc denoting the curved surface from the point of departure from the springline (vertical sidewall) of the pool to the pool bottom.

(63) "Response time" means time between bather distress and initiation of rescue assistance contact by a lifeguard in facilities providing lifeguards.

(64) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to water slides, wave pools, and water lagoons. These facilities are regulated by chapter 246-262 WAC.

(65) "Secretary" means the secretary of the department ((of health)).

(66) "Serious injury" means any injury:

(a) Requiring emergency service response where a person requires medical treatment as determined by the emergency medical response personnel; or

(b) Resulting in a person seeking medical attention at a medical facility, hospital emergency room or admittance to a hospital.

(67) "Shallow water" means water equal to or less than five feet in depth.

(68) "Shallow water lifeguard" means a person appointed by the owner or manager to supervise bather safety in water depths not exceeding five feet who meets the training requirements of this chapter.

(69) "Spa pool" means a pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest and the pool is not drained, cleaned, and refilled for each user. The spa pool may include, but not be limited to,

hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles in any combination.

(70) "Spray pool" means a pool or artificially constructed depression for use by bathers in which water is sprayed, but is not allowed to pond in the bottom of the pool.

(71) "Springline" means the point where the pool wall breaks from vertical and begins its arc in the radius of curvature (for cove construction) to the bottom of the pool.

(72) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs.

(73) "Suction outlet" means a fitting, fitting assembly and related components including the sump or bulkhead fitting, cover and hardware, that provides a localized low pressure area for the transfer of water from a water recreation facility. Types of suction outlets include main drains, equalizer line outlets, and submerged outlet drains.

(74) "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing and having a depth of two feet or more at any point and including all associated facilities.

(75) "Swim spa" means a type of spa pool used primarily for stationary swimming.

(76) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(77) "TU" means turbidity unit as measured by the nephelometric method.

(78) "Turnover time" means the minimum time necessary to circulate the entire volume of the pool facility through the treatment system.

(79) "UBC" means Uniform Building Code.

(80) "UL" means Underwriters' Laboratories.

(81) "Wading pool" means any artificial pool of water equal to or less than two feet deep and intended for wading purposes.

(82) "Walking surface" means any surface used as a direct access surface for a pool area and the walking surface's change room facilities where the user is barefoot.

(83) "Water treatment operator" means the appointed person operating the physical and mechanical equipment and performing related water quality monitoring and associated record keeping for proper operation of the physical facility.

(84) "Water recreation facility ((WRF))" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined under RCW 70.90.110 and regulated under chapter 246-262 WAC;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(85) "WRF" means water recreation facility.

(86) "WRPA" means Washington Recreation and Parks Association.

(87) "WSDA" means Washington state department of agriculture.

(88) "YMCA" means Young Men's Christian Association.

**AMENDATORY SECTION** (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

**WAC 246-260-031 General design, construction, and equipment for all WRF pool facilities.** (See additional design and construction requirements for swimming pools in WAC 246-260-041, for spa pools in WAC 246-260-051 and 246-260-061, for wading pools in WAC 246-260-071, for spray pools in WAC 246-260-081 and for specialty design conditions in WAC 246-260-091. See chapter 246-262 WAC for specific requirements for water park type features.)

(1) **Location:** Owners shall locate pools to minimize surface drainage and other potential sources of pollution from entering the pool.

(2) **Materials:** Owners shall use only structure and equipment materials that are nontoxic, durable, inert, and easily cleanable.

(3) **Walking surfaces:** Owners shall design and maintain walking surfaces:

(a) Sloping away from the pool or pools;

(b) Sloping a minimum of one-fourth inch per foot to drain;

(c) Having a nonslip finish;

(d) Not having an abrupt change in height of greater than one-half inch, a gap no greater than one-half inch in width, or a crumbling surface presenting a potential tripping hazard;

(e) Equipped with sufficient drains to prevent standing water; and

(f) Of easily cleanable, impervious finishes.

(4) **Barriers for new construction and remodeling:**

(a) Owners shall provide barriers to prevent unauthorized persons from gaining access to pools. Spray pool facilities without standing water are exempt from barrier requirements of this section.

(b) Barriers at limited use pools must be at least sixty inches high.

(c) Barriers at general use pools must be at least seventy-two inches high.

(d) Barriers, including windows, (see figures 031.1 and 031.2) may not:

(i) Allow passage of a four-inch diameter sphere; or

(ii) Have spaces between vertical members greater than a width of one and three-quarter inches if the distance between the tops of horizontal members are spaced less than forty-five inches apart.

(e) Solid barriers may not have indentations or protrusions, other than normal construction tolerances and masonry joints.

(f) Barriers must have self-closing, self-latching gates or doors that provide either:

(i) A mechanism that uses a continuously locked latch, coded lock or other equivalent access control system that always requires a key or code to enter pool area. If the latch is less than sixty inches from the ground, the barrier must have an eighteen-inch radius of solid material around the latch (see figure 031.2) to preclude a child on the outside of the barrier from reaching through the gate or barrier and opening the latch and entering the pool; or

(ii) A latch height of sixty inches or more from the ground.

(g) Restricted area service entrances are exempt from door or gate requirements provided that no public access is available.

(h) Lifeguarded pools are not required to have a self-closing, self-latching gate during the period a pool is in use. Facility gates shall be closed and locked during nonuse periods.

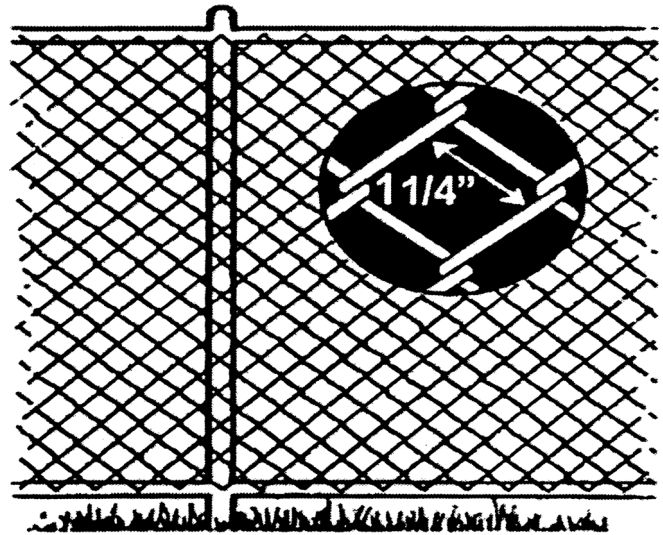
(i) Barrier heights are measured on the side outside the pool enclosure area. Owners shall ensure that surrounding ground levels, structures, or landscaping do not reduce the effective height of the barrier.

**Figure 031.1**

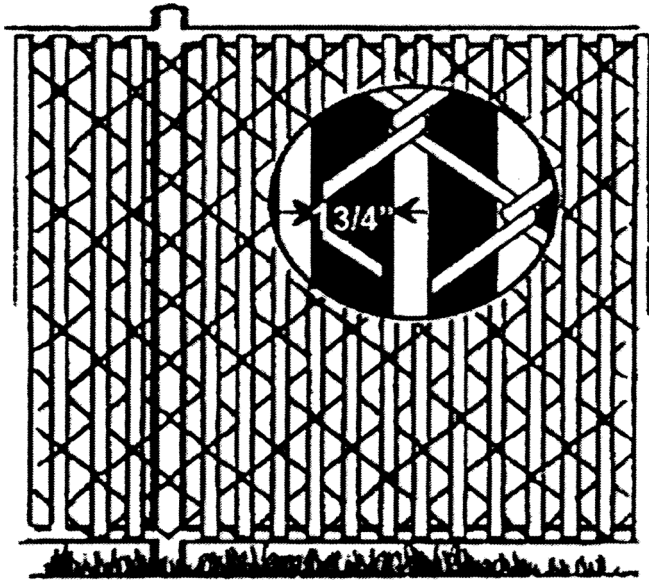
Barrier Construction Detail

**(a). For a Chain Link Fence:**

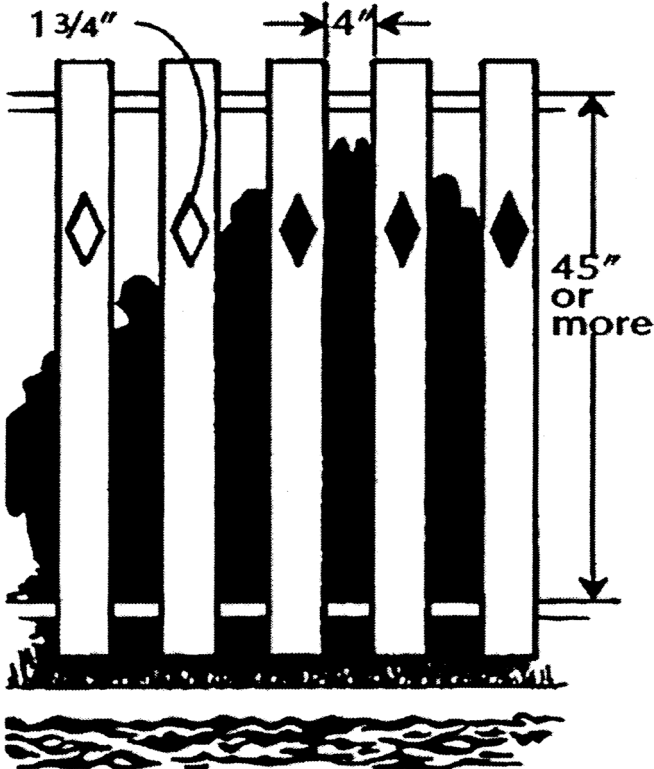
The mesh size shall not exceed 1 1/4 inches square.



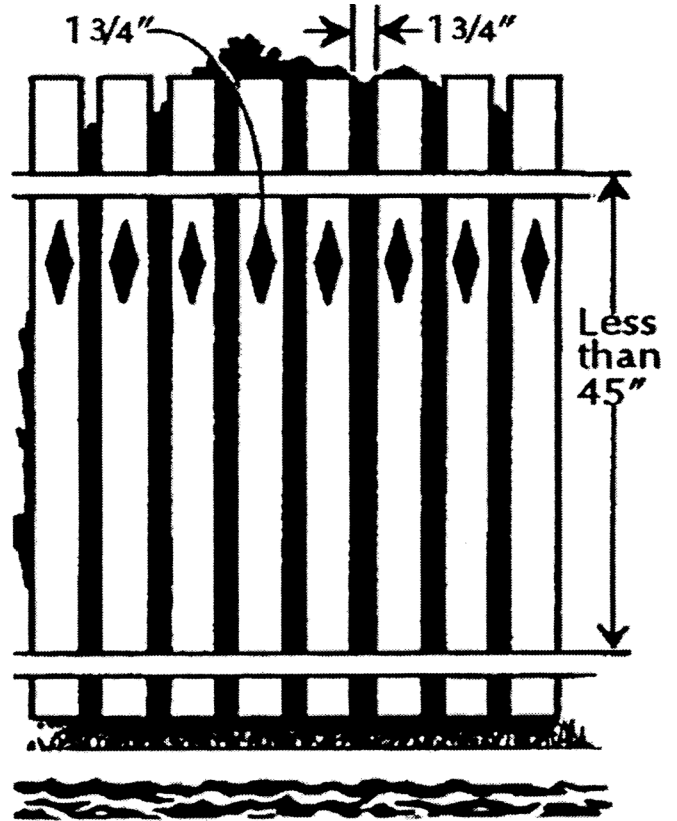
**(b). When chain link exceeds 1 1/4 inches square, provide slats to reduce mesh openings to no more than 1 3/4 inches.**



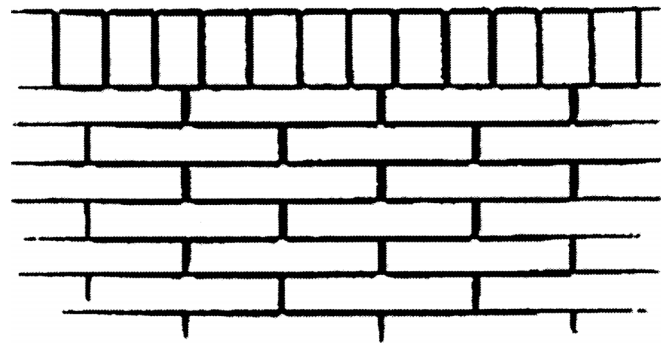
(c). Vertical Spacing: If tops of horizontal members are greater than 45 inches apart, vertical spacing shall not exceed 4 inches.



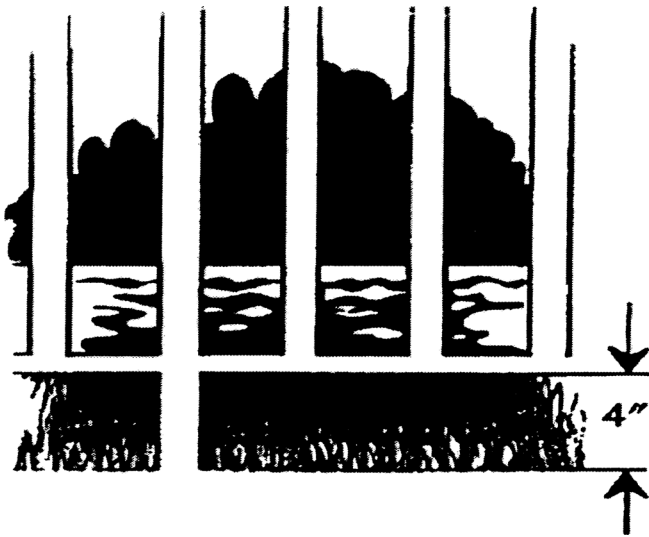
(d). Vertical Spacing: If tops of horizontal members are less than 45 inches apart, vertical spacing shall not exceed 1 3/4 inches.



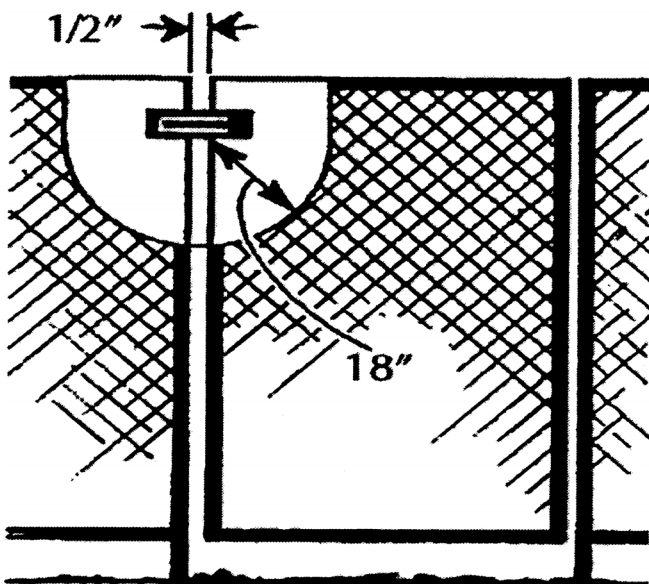
(e). Solid Barrier: No indentations or protrusions shall be present, other than normal construction tolerances and masonry joints.



(f) **Maximum Clearance** shall not exceed 4 inches above grade.



**Figure 031.2 Gate and Latch Detail:** When latch height is less than 60 inches from the ground, a continuously locked lock must be provided with an 18 inch radius of protection around the latch.



(5) **Barriers for existing facilities:** Before June 1, 2008, owners shall provide barriers for all pools conforming with subsection (4) of this section. Barrier modifications made prior to the compliance deadlines shall meet the requirements in subsection (4) of this section, at the time the modifications are made.

(6) **Pool surface:** Owners shall ensure pool surfaces are constructed and maintained to:

- (a) Have white or light color finish;
- (b) Not cause cutting, pinching, puncturing, entanglement, or abrasion hazard under casual contact; and
- (c) Conform to ANSI/NSPI-1 2003 Standards for Public Swimming Pools or ANSI Standard NSPI-@-1999, American National Standard for Public Spas.

(7) **Inlets:** Owners shall provide pool inlets that are:

- (a) Submerged;
- (b) Located to produce uniform water and chemical circulation throughout the pool; and
- (c) Located on the bottom of swimming and wading pools over twenty-five hundred square feet and spa pools greater than ten thousand gallons.

(8) **Outlets:**

(a) Except as provided in (f) and (g) of this subsection, owners shall provide pool outlets with:

- (i) Overflow and main drain systems each designed to carry one hundred percent of the total recirculation filter flow;
- (ii) Main drain piping systems designed to carry one hundred percent or more of total recirculation filter flow when a single pump is used or fifty percent or more of total recirculation filter flow when multiple pumps are used; and
- (iii) Valving on main drain piping designed to provide required flow.

(b) Owners shall ensure that overflow outlets maintain a minimum of sixty percent of filter recirculation flow at all times.

(c) Overflow outlets must consist of an overflow channel on the perimeter of swimming pools twenty-five hundred square feet or more and spa pools ten thousand gallons or more, to promote uniform circulation and skimming action of the upper water layer with:

- (i) A design preventing all matter entering the channel from returning to the pool;
- (ii) Dimensions minimizing the hazard for bathers, such as catching arms or feet;
- (iii) One one-hundredth of a foot slope per foot or more. However, adequate hydraulic justification from a designer to ensure the overflow system will meet (c)(v) of this subsection may be provided as an alternative;

(iv) Drains sufficiently spaced and sized to collect and remove overflow water to return line and filter, where applicable; and

(v) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow without flooding the overflow channel.

(d) Overflow outlets must consist of skimmers or overflow channels for pools less than twenty-five hundred square feet, or for spas under 10,000 gallons.

(i) Weirs provided in skimmers must have a normal operation flow rate of three to five gpm per inch of weir;

(ii) Skimmer equipment must be recessed in the pool wall so no part protrudes beyond the plane of the wall into the pool;

(iii) Skimmers must be equipped with a device, such as an equalizer line, to prevent air lock in the recirculation suction line. If equalizer lines are used, they must be protected

with a suction outlet that conforms to the ((~~ASME A112.19.8~~)) suction fitting standard;

(iv) Skimmers must be equipped with a removable and cleanable screen designed to trap large solids;

(v) Skimmers shall operate continuously with a minimum displacement rate of fifteen gallons per bather in swimming pools, twenty gallons in spa pools, and seven gallons in wading pools.

(e) Main drains in all pools must:

(i) Be located at swimming and wading pool low points;

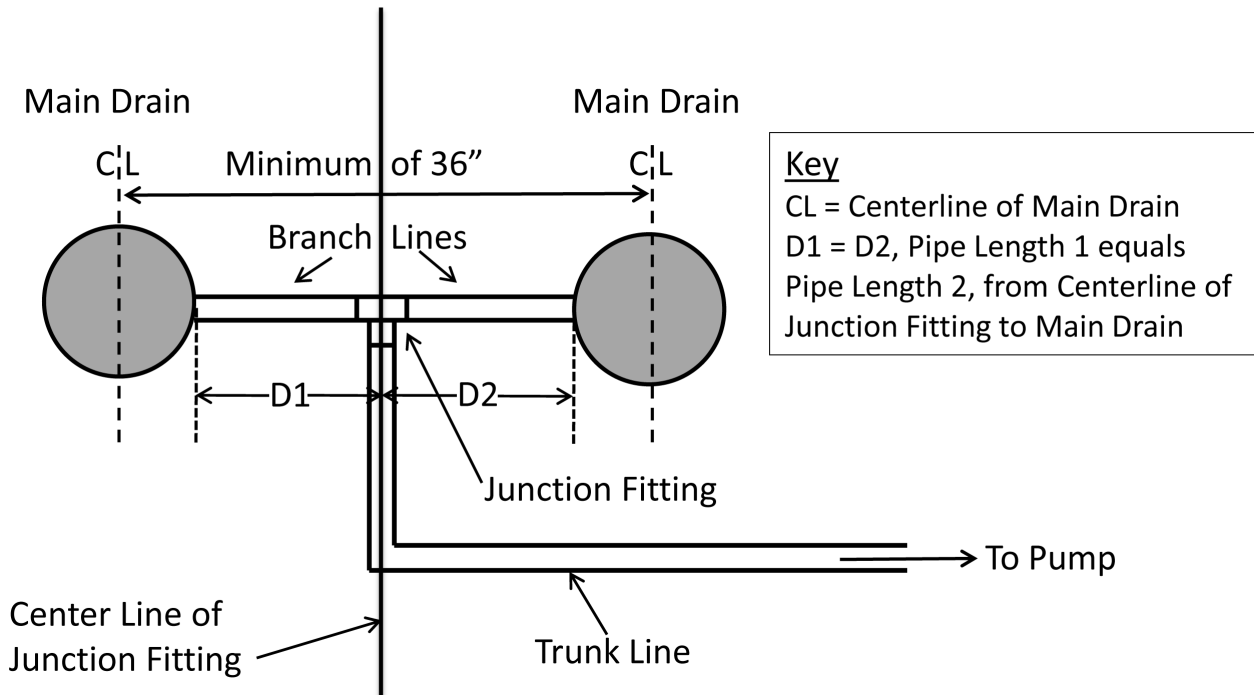
(ii) Have piping designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box;

(iii) Have covers on main drains with maximum flow of one and one-half feet per second;

(iv) Consist of two or more main drains for any pumped water recirculating system designed;

(A) Piping must be manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting (see Figure 031.3);

**Figure 031.3**  
Main Drain Branch Line Piping Detail



(B) Main drains must be spaced at least three feet apart, measured between the centers of the drain covers;

(C) Main drains must conform to the ((~~ASME A112-19.8~~)) suction fitting standard;

(D) Multiple main drains must be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 031.4.

Table 031.4  
Main Drain Flow Rating Requirements

	Number of Main Drains Per Recirculation System			
	2	3	4	5
Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.	100%	50%	33.3%	25%



(f) Existing water recreation facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(g) New water recreation facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(9) **Pumps:** Owners shall provide and maintain recirculation pumps with adequate capacity to provide design flows for the entire operating and backwash cycles of the filter.

(10) **Strainers:** Owners shall provide hair and lint strainers for pumps that precede filters.

(11) **Pool appurtenances:**

(a) Owners shall ensure pools have:

(i) Handholds when the pool deck is greater than twelve inches above the water surface;

(ii) Stairs leading into spa pools;

(iii) Step risers on the exterior of the spa pool shall conform with UBC requirements for risers with nonslip tread finishes, when spas are elevated off the pool floor; and

(iv) Stairs, ladders, or stepholes for access at the shallow end of swimming pools.

(b) Owners shall ensure that stairs, when provided, meet the following construction requirements:

(i) Nonslip tread finish;

(ii) Contrasting color stair tread edges;

(iii) Placement recessed into the side of pools specifically designed for lap or competitive swimming;

(iv) Handrail having leading edges less than eighteen inches beyond and less than eight inches inside (horizontally) the vertical plane of the bottom riser;

(v) Each riser tread shall have a minimum unobstructed, tread depth of ten inches and minimum surface area each of two hundred forty inches;

(vi) Uniform riser heights of seven and one-half inches or less on general use swim pools fifteen hundred square feet or more and spa pools greater than forty feet in perimeter, except the bottom riser may be less than the uniform height; and

(vii) Uniform riser heights of ten inches or less for all other pools, except the bottom riser may be plus or minus two inches of the uniform height.

(c) Ladders or stepholes at swimming pools shall be:

(i) Spaced at a minimum of one for every seventy-five feet of swimming pool perimeter deeper than four feet;

(ii) Provided at both sides of the deep end of swim pools over thirty feet in width; and

(iii) Equipped with handrails.

(12) **Valves:** Owners shall provide valves to allow isolation and maintenance of equipment.

(13) **Balancing tanks:** Owners shall provide balancing tanks for pools designed with overflow channels. Balancing tanks must be of adequate size to prevent air lock in the pump suction line and have sufficient capacity to prevent flooding of the overflow channel.

(14) **Equipment and chemical storage rooms:** Owners shall provide enclosed, locked, lighted, vented rooms for mechanical equipment, with floors sloped to a floor drain and minimum access area three feet wide around equipment. Owners shall provide a separate chemical storage area or

room that conforms to manufacturer's requirements for each chemical used in the pool area.

(15) **Make-up water:** Owners shall ensure an adequate supply of make-up water with associated piping, for each pool:

(a) Sufficient to replace daily pool losses;

(b) From a supply conforming to chapter 246-290 WAC;

(c) Without cross connections; and

(d) If using a pool fill spout, the spout may not project greater than one inch into the space above the water surface and shall be shielded so as not to create a deck hazard.

(16) **Filters:**

(a) Owners shall equip pools with filtration equipment:

(i) Meeting the applicable standards of NSF (for commercial application) or equivalent;

(ii) With a rate of flow indicator and gauge(s) for monitoring backpressure on filter;

(iii) With a means of discharging filter backwash to waste with a sight glass in a manner not creating a cross connection or a public nuisance;

(iv) With a means to release air entering the filter tank for pressure filters.

(b) If cartridge filters are used, owners shall always possess an extra set of cartridges and may not use cartridge filters with bypass valves.

(17) **Disinfection equipment:**

(a) Owners shall provide disinfection equipment:

(i) Providing a continuous and effective disinfectant residual;

(ii) Using a disinfectant with an easily monitored residual;

(iii) Having a design feed rate providing effective disinfection levels for peak demand conditions; and

(iv) Conforming to NSF standard 50 if disinfection chemical is other than gas chlorine.

(b) If disinfection equipment has adjustable output rate chemical feed of liquid solutions, the equipment shall:

(i) Feed under positive pressure in the recirculation system;

(ii) Provide a means for dosage adjustment; and

(iii) If the disinfection equipment is above pool water surface level, have provisions to prevent disinfectant solution siphoning when equipment is turned off.

(c) Solid tablets or granules may not be placed in skimmer basket.

(d) Rooms holding chlorine gas equipment must:

(i) Be above ground level;

(ii) Be constructed so all openings or partitions with adjoining rooms are sealed;

(iii) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the pool facility;

(iv) Have door(s) opening only outward to the out-of-doors; and

(v) Have a sign on the door exterior reading **DANGER CHLORINE** in large enough letters to be read twenty-five feet away.

(e) Chlorine rooms must have mechanical exhausting ventilation that includes:

(i) Air inlets located as far as possible from fan intakes to promote good air circulation patterns;

- (ii) A minimum of one air change per minute in the chlorine room when fan is operating;
- (iii) A remote switch outside the room or a door-activated switch to turn on fan before entering;
- (iv) Suction for fan near the floor;
- (v) Exhaust vents located to prevent chlorine contaminated air from being drawn into supply air; and
- (vi) Screened chlorinator vents.
- (f) Gas chlorine systems must:
  - (i) Be vacuum injection type, with vacuum-actuated cylinder regulators;
  - (ii) Provide integral backflow and antisiphon protection at the injector;
  - (iii) Have taring (net weight of cylinder gas) scales for determining chlorine weight; and
  - (iv) Have a means for automatic shutoff when water flow is interrupted.
- (g) A self-contained breathing apparatus designed for use in chlorine atmospheres caused by chlorine leaks must be available in an area accessible to the operator outside the chlorine room. The apparatus must be maintained in accordance with department of labor and industry standards. If procedures are established for immediate evacuation and the owner has a written agreement with emergency service fire districts or other approved organizations within the area for promptly responding to chlorine leaks, then breathing protection is not required at the pool facility.
  - (h) Chlorine gas cylinders must:
    - (i) Be stored only in designated chlorine rooms;
    - (ii) Have an approved valve-stem cylinder wrench on the valve stem to shut the system down in an emergency event;
    - (iii) Be properly secured to prevent tipping;
    - (iv) Be tagged to indicate cylinders are empty or full; and
    - (v) Not exceed one hundred fifty pounds tare weight per cylinder.
  - (i) Owners shall ensure that chemical disinfectants are not hand-fed into pools actively in use. *Exception*, chemical disinfectants may be hand-fed on an emergency basis if no users are in the pool and the pool is tested to meet water quality standards before reentry.
  - (j) If ozone is provided as a supplemental disinfection process:
    - (i) When ozone is produced by corona discharge method, the area where the ozone is produced shall meet the requirements of (e) of this subsection, unless field tests demonstrate no hazardous off-gassing of product;
    - (ii) When ozone is produced by ultraviolet light, it may be allowed in the mechanical room provided there are no levels of off-gassing exceeding 0.05 ppm;
    - (iii) Provide an ozone detector and alarm with corona discharge ozone generators;
    - (iv) Provide sufficient contact chambers to prevent excess levels of ozone from entering the pool water; and
    - (v) Testing equipment must be provided to monitor levels in the water and the atmosphere immediately above the water and the room where the ozone is produced.
  - (k) If copper or copper/silver is provided as a supplemental disinfection process:
    - (i) The output rate and method of controlling process levels into the pool facility must be provided;

- (ii) The system shall not have a detrimental effect on maintaining proper turnover rates for the pool; and
- (iii) Testing equipment provided to monitor levels of copper and silver in the pool water.

(18) **Chemical feeding equipment for pH control:** Owners shall provide chemical feed equipment for pH control, with a means of automatic shutoff if water flow is interrupted, for:

- (a) Swimming pools fifty thousand gallons or greater;
- (b) Spa pools ten thousand gallons or greater; and
- (c) All pools treated with caustic soda or carbon dioxide.

(19) **Ventilation:** Owners shall provide adequate ventilation (in conformance with ASHRAE standards for pools and decks) to maintain air quality and to prevent moisture buildup in indoor areas. Design considerations must include maintaining negative pressure in the pool and deck area; providing adequate total airflow for acceptable air distribution; and preventing short-circuiting of fresh air return to exhaust.

(20) **Locker room and dressing rooms:**

- (a) Owners shall provide general use pool facilities with locker rooms and dressing rooms having:
  - (i) Separate facilities for each gender constructed to block line of sight into locker rooms;
  - (ii) Water impervious nonslip floors properly sloped to drains to prevent standing water;
  - (iii) Easily cleanable walls, lockers, and benches (if provided);
  - (iv) Junctions between walls and floors coved for ease of cleaning; and
  - (v) Properly anchored lockers, (if provided), to prevent tipping.
- (b) Owners shall provide limited use pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located more than one-quarter mile from any served living units.
- (c) Owners shall provide general use recirculating spray pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located indoors.

(21) **Restrooms, shower rooms, and plumbing fixtures:**

- (a) Owners shall provide general use pool facilities with restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.5 of this section (swim and wading pool bathing loads and spa bather capacity are additive for determining total bather load). The pool facility design shall provide users easy access to restroom and shower facilities with minimum nonuser cross traffic.
- (b) Owners shall provide general use pool facilities with:
  - (i) Hose bibs with vacuum breakers around pool decks at a maximum spacing of one hundred fifty feet; accessible to each locker room; and within equipment room at facilities fifteen hundred square feet or more;
  - (ii) A janitor's sink at indoor facilities with a pool of fifteen hundred square feet or more; and
  - (iii) An operable drinking fountain conforming to ASA requirements at facilities with a pool fifteen hundred square feet or more.
- (c) Owners shall provide limited use pool facilities with:

(i) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.5 of this section, if bathing load exceeds eighty persons;

(ii) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.6 of this section, if bathing load is eighty persons or less;

(iii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet;

(iv) A hose bib accessible to each locker room; and

(v) A hose bib within each equipment room at facilities with a pool of fifteen hundred square feet or more.

**Table 031.5**

Restroom Minimum Requirements\* for General Use Pools  
(Includes swimming, spa, and wading pools\*\*)

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Toilets up to 120	1/60	1/40
From 121-360	1/80	1/60
Over 360 add	1/150	1/100
Urinal up to 120	1/60	N/A

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
From 121-360	1/80	N/A
From 360 add	1/150	N/A
Showers up to 120	1/40	1/40
From 121-360	1/60	1/60
Over 360 add	1/100	1/100
Sinks up to 200	1/100	1/100
From 201-400	1/200	1/200
Over 400 add	1/400	1/400
Diaper changing station	1	1

\* If sufficient supporting documentation is provided, restroom fixture numbers may be adjusted between the genders based on proposed use of the facility. (E.g., if the designer has experience and justification based on similar type facilities indicating that providing one additional shower for the women and one less for men would provide a sufficient number of fixtures to meet demands, this may be allowed.)

\*\* If a general use spa or wading pool is the only pool at the facility, then a minimum of only one toilet, shower, and sink is required for each gender.

**Table 031.6**

Restroom Minimum Requirements for Limited Use Pools  
(Includes swimming, spa, and wading pools.)

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units* within 100 feet and less than three stories	-	-	-	-	-
Living units > 100 feet but < 500 feet and less than 3 stories	1	1**	1	-	1
Living units within 1/4 mile and/or with three or more stories	1	1	1	-	1
Living units greater than 1/4 mile	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)

\* "Living units" means all the units the facility serves.

\*\* A shower is required only if a spa is present.

(d) Owners shall provide general use recirculating spray pool facilities with:

(i) Separate restroom facilities for each sex containing at least one toilet and handwashing sink;

(ii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(iii) Additional plumbing fixtures, if indoors, conforming to the requirements for general use pools described in Table 031.5 of this section.

(e) Owners shall provide limited use recirculating spray pool facilities with:

(i) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(ii) A restroom facility containing at least one toilet and one handwashing sink, if living units served are farther than one hundred feet away from the main pool.

(f) Restroom facilities must be located convenient to, and no further than one hundred feet away from, the main pool. They must have flush toilets provided with toilet tissue in dispensers and handwashing sinks including:

(i) Hot and cold or tempered water delivered through a mixing faucet with a maximum temperature of one hundred twenty degrees Fahrenheit;

(ii) Single service soap in a nonglass dispenser;

(iii) Single service towels or electric hand dryer; and

(iv) A minimum running water cycle of at least ten seconds if the faucets have self-closing valves.

(g) Shower facilities must be located convenient to, and no more than one hundred feet away from, the main pool. The facilities must have:

- (i) A design allowing a full-body shower in the nude;
- (ii) A design providing an enclosure confining water to the shower area;
- (iii) Nonslip floor impervious to water with sufficient drains to prevent water from standing within the shower areas;
- (iv) Running water delivered at a temperature between ninety degrees and one hundred twenty degrees Fahrenheit;
- (v) Single service soap in a nonglass dispenser; and
- (vi) Wall surfaces impervious to water up to shower head height.

(h) If owners limit the number of bathers within their facility and post and enforce the maximum bather load, owners may base the number of required plumbing fixtures on the posted maximum bather load.

(i) Owners shall dispose of all wastewater in a manner approved by the local health officer.

(22) **Diaper changing stations:** Owners shall provide a diaper changing station, including a handwashing sink conforming to the requirements in subsection (21)(f) of this section, accessible to all bathers, if children in diapers are allowed in the pool facility and the facility is:

- (a) A general use pool facility; or
- (b) A limited use pool facility located more than one hundred feet away from living units served.

(23) **Lighting:** Owners shall design and maintain pool facility lighting to a minimum level as described in Table 031.7. Sufficient overhead and underwater lighting shall be maintained to clearly see the bottom of the pool at all times pool is in use. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

**Table 031.7\***

Minimum Lighting Level Required at Water Recreation Facilities.

Location	Minimum Lighting Level
Indoor pool surface	30 foot candles
Outdoor pool surface*	10 foot candles
Pool Decks	10 foot candles
Locker rooms and mechanical rooms	20 foot candles

\* Outdoor pool facilities, which are used in daylight hours only (before dusk) are not required to meet this standard.

(24) **Flow-through pools:** Flow-through pools may qualify for exceptions to recirculation if:

- (a) Water supply is sufficient to provide the same turnover period specified for recirculation pools;
- (b) The source water supply meets acceptable quality requirements and is subject to a disinfection method as described under WAC 246-260-111(3);
- (c) The introduction of fresh treated pool water is accomplished by the same type of inlet and outlet design required for recirculation pools; and

(d) The pool water quality complies with WAC 246-260-111.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

**WAC 246-260-081 Spray pool design, construction, and equipment.** For more general design and construction requirements that pertain to all pools, see WAC 246-260-031.

(1) **Walking surface.** A minimum four-foot wide walking surface shall extend around the perimeter of a spray feature sufficient that the spray will not exceed the walkway area in normal conditions including light wind conditions.

(2) **Pool structure.** Owners shall ensure each spray pool has:

- (a) Pool surfaces with nonslip finishes impervious to water;
- (b) Uniform pool floor slopes not exceeding one foot of a slope for every twelve feet of horizontal floor length;
- (c) A source of water for the spray feature from an approved potable water supply;
- (d) Water drained to waste disposed in a manner approved by local authorities or the department after use in the spray pool, unless it is recirculated with approved treatment as described in WAC 246-260-031; and
- (e) The entire volume of water circulated through an approved treatment system every thirty minutes or less if water is recirculated.

(3) **Inlets.** Owners shall ensure spray nozzles at each spray pool are designed and maintained to not inflict physical damage to bathers. Design and construction shall include evaluation of forces of the spray nozzle including velocity, pressure and total force in proximity to bathers' eyes and other body orifices.

(4) **Outlets.**

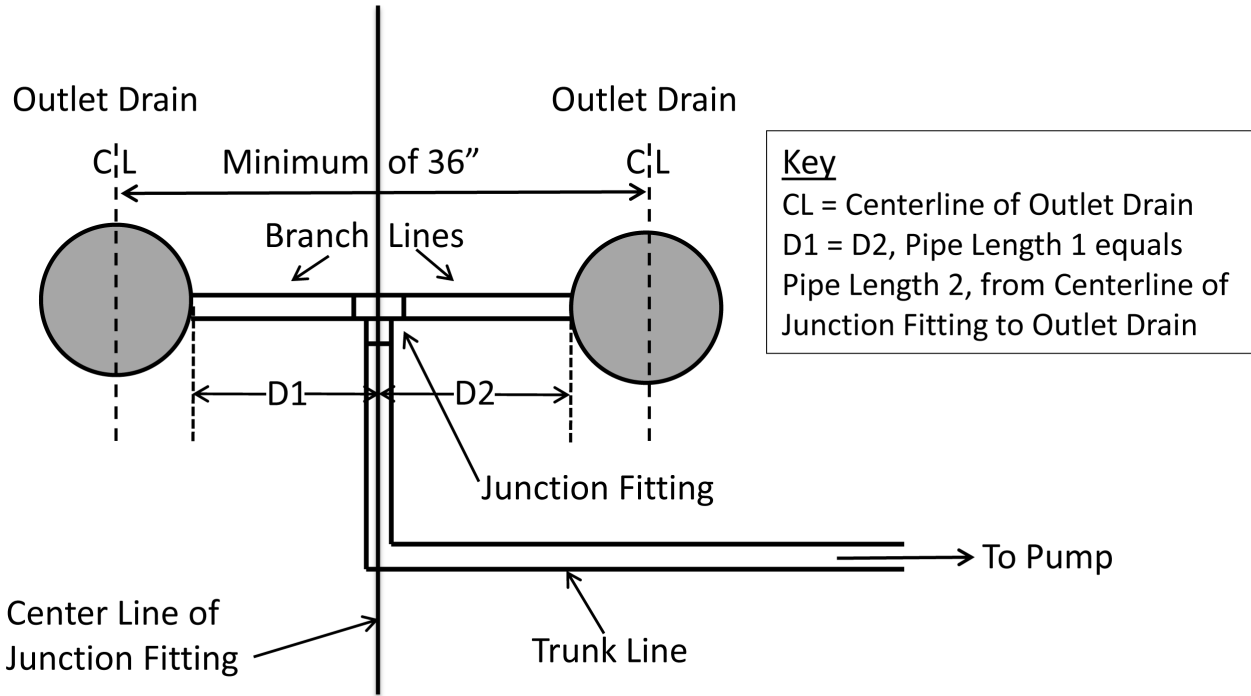
(a) Owners shall ensure outlet drains are designed and maintained to provide sufficient capacity to prohibit water accumulation in each spray pool.

(b) Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps between the pump and the outlet drain.

(c) Each spray pool must have two or more outlet drains that:

- (i) Are located at the low point of the pool;
- (ii) Are located at least three feet apart, measured between the centers of the drain covers; and
- (iii) Are manifolded with junction fittings placed in the middle of branch line piping between outlet drains, so that the length of branch line piping is equal on each side of the junction fitting, see Figure 081.1;

**Figure 081.1**  
Outlet Drain Branch Line Piping Detail



(iv) Have drain covers removable only with specific tools.

(d) Multiple outlet drains must be designed so that if one outlet drain becomes blocked, the remaining outlet drains are rated to at least one hundred percent of the maximum pump flow; see Table 081.1.

Table 081.1  
Outlet Drain Flow Rating Requirements

	Number of Outlet Drains per Recirculation System			
	2	3	4	5
Outlet drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of outlet drains.	100%	50%	33.3%	25%

(e) Outlet drains that are accessible to pool users and submerged must:

(i) Conform to the ((ASME A112.19.8)) suction fitting standard; and

(ii) Have a maximum flow of one and one-half feet per second through the cover.

(f) Outlet drains that are accessible to pool users and not submerged must have:

(i) Openings that prevent the passage of a sphere over one-half inch in diameter; and

(ii) Drain covers that withstand forces of users.

(5) **Emergency equipment.** No later than June 1, 2008, owners of existing pools with single main drains shall install emergency equipment to shut off all pumps hooked to the recirculation lines for the pools. This emergency equipment must be placed within twenty feet of the pool and marked with an emergency shutoff sign. The shutoff switch must include an audible alarm which can be heard by those in the area, or the switch must have an alarm that goes to a point where staff is always present during the periods the pool is open.

(a) Pools that include dual main drains meeting the requirements of this section, or other acceptable methods of providing equivalent protection to the emergency shutoff switch, are exempt from this requirement.

(b) The owner shall check the shutoff switch at least twice annually to determine it is properly operating.

(c) The department will develop a guidance document to aid owners and designers in potential options to the emergency shutoff switch and audible alarm.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

**WAC 246-262-010 Definitions, abbreviations, and acronyms.** The definitions in this section apply throughout

this chapter unless the context clearly ~~((requires))~~ indicates otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, department of labor and industries, the U.S. Bureau of Mines, or fire services training program.

(2) "ANSI" means American National Standard Institute.

~~((3)) ((3)) ("Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:~~

~~((a)) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;~~

~~((b)) Suction limiting vent system with a tamper-resistant atmospheric opening;~~

~~((c)) Gravity drainage system that utilizes a collector or balancing tank; and~~

~~((d)) Drain disablement that eliminates the use of suction outlets.~~

((4)) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with chapter 246-262 WAC.

~~((5))~~ ((4)) "ARC" means American Red Cross.

~~((6))~~ ((5)) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

~~((7))~~ "ASME" means the American Society of Mechanical Engineers;

~~((8)) "ASME A112.19.8 standard" means the ASME A112.19.8 2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a 2008 Addenda and the ASME A112.19.8b 2009 Addenda)~~ ((6)) "APSP" means Association of Pool and Spa Professionals.

~~((9))~~ ((7)) "ASTM" means American Society for Testing Material.

~~((10))~~ ((8)) "Attendant" means a person trained to operate an attraction and control the users in a safe orderly manner.

~~((11))~~ ((9)) "Attraction or ride" means any of the specific types of recreational facilities involving partial or total immersion or intentional contact with the water designated for public recreational use.

~~((12))~~ ((10)) "Biomechanics" means the study of the human body as a system operating under the laws of Newtonian mechanics and the biological laws of life.

~~((13))~~ ((11)) "Board" means the state board of health.

~~((14))~~ ((12)) "Boogie or mini-surf board" means any semirigid device used in a wave pool for flotation or as a riding device.

~~((15))~~ ((13)) "Branch line" means suction piping between a junction fitting and a suction outlet.

~~((16))~~ ((14)) "Centerline" means the path defined by geometric midpoints of a component or structure, generally used in consideration of the slide path in flume rides.

~~((17))~~ ((15)) "CNCA" means Council for National Cooperation in Aquatics.

~~((18))~~ ((16)) "Communication system" means any combination of devices permitting the passage of or exchange of messages between park operating personnel and between operating personnel and users. Systems can include, but are not limited to, two-way radios, hardwired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

~~((19))~~ ((17)) "Contaminant" means any physical, chemical or biological substance present in the RWCF water which may adversely affect the health or safety of the user and/or the quality of the water.

~~((20))~~ ((18)) "Cross-connection" means any physical arrangement connecting:

(a) A potable water system directly or indirectly, with anything other than another potable water system; or

(b) A RWCF to any potable or nonpotable water source capable of contaminating either the RWCF or potable water source as a result of backflow.

~~((21))~~ ((19)) "Department" means the Washington state department of health.

~~((22))~~ ((20)) "Discharge section" means the component or components making up the exit of the water slide, water tube, inner tube ride, speed slide, ramp slide, drop slide or drop tube, or kiddie flume. These components are the elements controlling the final direction and speed of the user.

~~((23))~~ ((21)) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or attraction segment where users enter above pool water level.

~~((24))~~ ((22)) "Drop slide or drop tube ride" means a sloped trough, chute, or tube exiting the user above the pool operating water level.

~~((25))~~ ((23)) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW in Washington state.

~~((26))~~ ((24)) "Entry access points" means the areas where users enter an attraction.

~~((27))~~ ((25)) "Entry rate" means the frequency at which users are permitted access to the attraction.

~~((28))~~ ((26)) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

~~((29))~~ ((27)) "Ergonomics" means a multidisciplinary activity dealing with the interactions between humans and their environment plus the traditional environmental elements atmosphere, heat, light, and sound, as well as objects with which the user comes in contact.

~~((30))~~ ((28)) "FINA" means Federation Internationale de Natation ~~((Amateur [Amateur]))~~ Amateur.

~~((31))~~ ((29)) "Flume or tube entry" means the area at which users enter a water slide, water tube, inner tube ride, speed slide, drop slide, drop tube, or kiddie flume.

~~((32))~~ ((30)) "fps" means feet per second.

~~((33))~~ ((31)) "gpm" means gallons per minute.

~~((34))~~ ((32)) "IAAPA" means International Association of Amusement Parks and Attractions.

~~((35))~~ ((33)) "Injury or illness report" means the written record of all facts regarding an injury or illness associated with the RWCF.

~~((36))~~ (34) "Inner tube ride" means an attraction where users ride inner tube-like devices through a series of chutes, channels, flumes, and pools.

~~((37))~~ (35) "Innovative recreational water contact facility" means any type of RWCF currently unregulated.

~~((38))~~ (36) "Intermediate pool" means any pool between the entry and exit pools in attraction using a series of pools.

~~((39))~~ (37) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

~~((40))~~ (38) "Kiddie flume or tube attraction" means a flume, chute, or tube designated for and restricted to use by small children.

~~((41))~~ (39) "Lifeguard" means an individual currently certified by red cross in advance lifesaving or lifeguard training, or YMCA senior lifesaver, or equivalent certification through the royal Canadian lifeguard services.

~~((42))~~ (40) "Lifeguard station" means the designated work station of the lifeguard.

~~((43))~~ (41) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

~~((44))~~ (42) "Main drain" means a submerged suction outlet for transferring water from a recreational water contact facility.

~~((45))~~ (43) "mg/l" means milligrams per liter.

~~((46))~~ (44) "Multiactivity pool" means a pool with more than one type of attraction (i.e., an adult activity pool with a series of tubes, chutes, cable rides, etc., intended for use by individuals with specific swimming abilities).

~~((47))~~ (45) "NSF" means National Sanitation Foundation.

~~((48))~~ (46) "NSPI" means National Spa and Pool Institute.

~~((49))~~ (47) "Operating levels" means water levels maintained within attractions during use for proper operation of facility and for controlling safety and sanitation.

~~((50))~~ (48) "Operations" means all aspects of a RWCF, which must be controlled to make the facility safe, healthy, and usable for the purpose intended.

~~((51))~~ (49) "Owner" means a person owning and responsible for a RWCF or authorized agent.

~~((52))~~ (50) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

~~((53))~~ (51) "Ponding" means a condition where water fails to drain from walking surfaces.

~~((54))~~ (52) "ppm" means parts per million.

~~((55))~~ (53) "Primary zone of visual coverage" means the area assigned to a lifeguard or attendant for primary visual surveillance of user activity.

~~((56))~~ (54) "Radius of curvature" means the radius arc which denotes the curved surface from the point of departure from the vertical sidewall (springline) of the pool to the pool bottom.

~~((57))~~ (55) "Ramp slide" means a slide allowing one or more users to slide in unison down a straight incline to a run-out or a receiving pool.

~~((58))~~ (56) "Recirculation filter water" means water which is recirculated by the RWCF for treatment purposes, i.e., filtration and disinfection.

~~((59))~~ (57) "Response time" means elapsed time between bather distress and initiation of rescue assistance by a lifeguard (or attendant where applicable).

~~((60))~~ (58) "RWCF" means recreational water contact facility which is an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water and includes, but is not limited to, water slides, wave pools, and water lagoons.

~~((61))~~ (59) "Secretary" means the secretary of the department ~~((of health))~~.

~~((62))~~ (60) "Serious injury" means any injury requiring admission to a hospital.

~~((63))~~ (61) "Speed slide or speed tube" means a sloped trough, flume, tube, or roller track having long straight and/or steep drops where users sustain speeds of twenty miles per hour or more.

~~((64))~~ (62) "Springline" means the point from which the pool wall breaks from vertical and begins its arc in the radius of curvature (for coved construction) to the bottom of the pool.

~~((65))~~ (63) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs.

(64) "Suction outlet" means a fitting; fitting assembly and related components, including the sump or bulkhead fitting, cover, and hardware that provides a localized low pressure area for the transfer of water from a recreational water contact facility. Types of suction outlets include main drains and equalizer line outlets.

~~((66))~~ (65) "Surfboard" means a rigid device used in a wave pool for riding.

~~((67))~~ (66) "Tail coverage" means providing insurance coverage for a given period of time for discovery of claims made after the policy term for "claims made" type of insurance.

~~((68))~~ (67) "Total turnover" means the time it takes for the pool attraction water volume to be recirculated as a sum of the flows from treatment turnover and attraction recirculation systems turnover.

~~((69))~~ (68) "Treatment turnover" means the minimum time necessary to circulate the entire attraction water volume through the recirculation filter system.

~~((70))~~ (69) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

~~((71))~~ (70) "T.U." means turbidity unit as measured by the nephelometric method.

~~((72))~~ (71) "Wading activity pool" means a pool or area less than twenty-four inches in total water depth with activities intended for younger children.

~~((73))~~ (72) "Walking surface" means any direct access surface to the attractions or change rooms where the user will be in bare feet. Areas set aside for picnicking, sunbathing, and lounging are excluded.

((74)) (73) "Water slide or water tube" means a sloped trough-like flume or tube structure of varying slope and direction using water as a lubricant and/or method of regulating the rider speed.

((75)) (74) "Water treatment operator" means the person appointed to operate the mechanical equipment and perform related water quality monitoring for proper operation of the physical facility.

((76)) (75) "Wave pool" means a recreational pool producing waves which usually begin at the deep end and proceed toward and dissipate at the shallow end.

((77)) (76) "WWA" means World Waterpark Association.

**AMENDATORY SECTION** (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

**WAC 246-262-060 General design, construction, and equipment.** (1) Owners shall locate RWCFs to:

(a) Minimize pollution by dust, smoke, soot, and other undesirable substances;

(b) Eliminate pollution from surrounding surface drainage; and

(c) Ensure pools within the RWCF are more than fifteen feet from any structure, object, or land formation (i.e., pump-house, tree, etc.), which would provide a user with the opportunity to jump from such a structure into the pool. This does not include any barriers provided to prevent unauthorized access to pool or segments of attractions which enter pool.

(2) Owners shall use only materials in the structure and equipment which are nontoxic, durable, inert, impervious to water, and easily cleaned.

(3) Owners shall design and maintain walking surfaces which are:

(a) Sloped a minimum one-fourth inch per foot;

(b) Of a nonslip finish;

(c) Equipped with sufficient drains to prevent standing water;

(d) Free of resilient coverings, e.g., carpeting; and

(e) At least four feet in width.

(4) Owners shall provide adequate barrier protection to prevent unauthorized access including:

(a) In outdoor facilities, a barrier six feet or more in height with:

(i) Openings, holes, or gaps not to exceed four inches except openings protected by gates or doors; and

(ii) Lockable gates and entrances either regulated during periods of use or provided with a self-closing, self-latching mechanism a minimum of forty-two inches from the ground.

(b) In indoor facilities, suitable barriers to prevent access by unauthorized individuals or pool access by unattended small children.

(5) Owners shall ensure that pools:

(a) Comply with all provisions of chapter 246-260 WAC where pool facilities are a separate attraction;

(b) Have surfaces with:

(i) Materials complying with subsection (2) of this section;

(ii) Watertight and nonabrasive construction;

(iii) Nonslip finish where users are walking; and

(iv) White or light color finish not obscuring the view of objects or surfaces.

(c) Are dimensionally designed to provide for the safety of the user and circulation of the water including, but not limited to:

(i) Absence of protrusions, extensions, means of entanglement, or other obstruction which can cause entrapment or injury;

(ii) Construction tolerances conforming with current ANSI public pool standards;

(iii) Uniform pool floor slopes as follows:

(A) Not exceeding one foot of drop in seven feet of run for pools serving as landing or exiting pools, where total water depth is less than forty-eight inches; and

(B) Providing a maximum slope of one foot of drop in twelve feet of run up to a depth of five and one-half feet in pools where users enter and participate in extended activities.

(iv) Vertical walls for a minimum distance noted in Table 4 of this section, which may be curved (not to exceed allowable radius) to join the floor.

(A) Vertical means walls not greater than eleven degrees from plumb.

(B) Coving or portion of the side wall of a diving area in the pool shall conform as described in subsection (5)(c)(vi) of this section.

(C) In new construction or alterations to existing construction, ledges are prohibited.

(D) Requirements in subsection (5)(c) of this section do not apply to spas.

(v) A maximum intrusion beyond the vertical (as defined in subsection (5)(c)(iv)(A) of this section) with any configuration not to exceed a transitional radius from wall to floor where floor slopes join walls and which:

(A) Has its center of radius no less than the minimum vertical depth specified in Table 4 of this section below the water level;

(B) Has arc of radius tangent to the wall; and

(C) Has a maximum radius of coving (or any intrusion into the pool wall/floor interface) determined by subtracting the vertical wall depth from the total pool depth.

TABLE 4  
MAXIMUM RADIUS COVING OR POOL INTRUSION  
DIMENSIONS BETWEEN POOL FLOOR AND WALL\*

Pool Depth	2'0"	2'6"	3'0"	3'6"	4'0"	4'6"	5'0"	>5'0"
Minimum Slide Wall								
Vertical Depth	1'6"	1'10"	2'2"	2'6"	2'10"	3'2"	3'6"	>3'6"
Maximum Radius of Curvature	6"	8"	10"	12"	1'2"	1'4"	1'6"	**Maximum radius equals pool depth minus the vertical wall depth

Note: \* For pool depths which fall between the depths listed, values can be interpolated.

\*\* Radius of coving cannot intrude into pool within diving envelope or deep water entry area for attractions entering above pool water level.



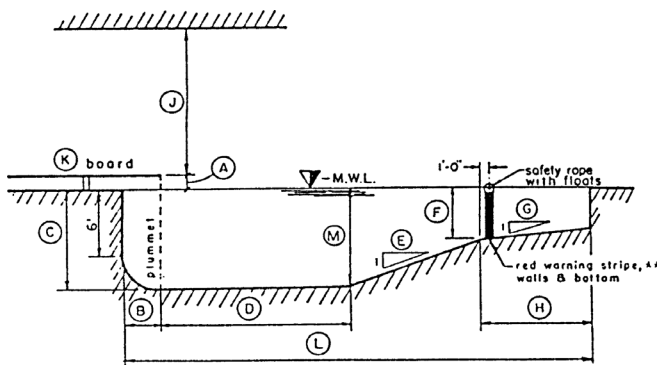
(vi) Provision of diving envelopes in pools or areas of pools designated for diving activities to include:

(A) A diving envelope of no less than the CNCA standard configuration\* noted in Figure 1 of this section in areas where user would enter from deck level, diving board, or platform at a height of less than one-half meter (twenty inches).

Note: \*This requirement is based on a standard described in CNCA publication "Swimming Pools: a Guide to their Planning, Design, and Operation" 1987. Fourth edition. Human Kinetics Publisher, Inc., Champaign, Illinois. Figure 8.1

FIGURE 1:

Minimum dimensions for pools with provision for diving from deck level or providing boards or platforms at a height less than one-half meter.



Dimension	Minimum	Preferred or Maximum
A Height of board above water		20 in.
B Board overhang	2 ft 6in.	3 ft
C Depth of water at plumbet	9 ft	10 ft*
D Distance from plumbet to start of upslope	16 ft	18 ft*
E Inclination of upslope of bottom		1:3
F Depth of water at breakpoint	4 ft 6 in.	

Dimension	Minimum	Preferred or Maximum
G Slope of bottom in shallow portion of pool	1:12	1:15*
H Length of shallow section of pool	8 ft	14 ft*
I Distance to any overhead structure	13 ft	15 ft*
K Board length		12 ft
L Length of pool	40 ft	50 ft*
M Dimension not less than C minus	6 in.	

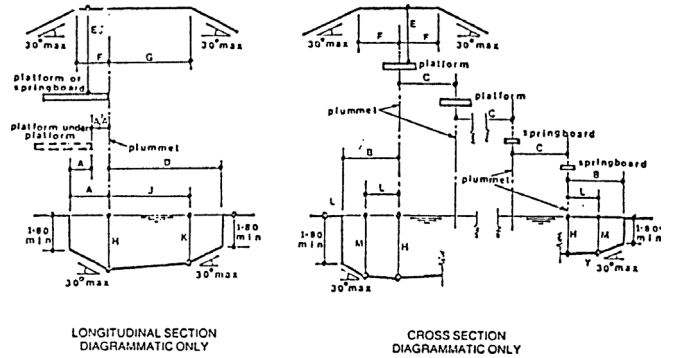
Note: \* Values with asterisks are not to be considered as maximums.  
\*\* Warning stripe at break point may be of any contrasting color.

(B) A diving envelope of no less than the FINA standard configuration\*\* noted in Figure 2 of this section in areas where user would enter from diving board or platform at a height of one-half meter (twenty inches) or greater.

Note: \*\*This requirement is based on a standard described in FINA publication "FINA Handbook - 1986-1988." Constitution and rules governing swimming, diving, water polo, and synchronized swimming, 1986-1988. Edited by E. Allen Harvey, Vancouver, Canada VGN 3R6, Section D, pp. 114-115.

FIGURE 2:

Minimum dimensions for pools with boards or platforms at a height of one-half meter or more.



	Dimensions	SPRINGBOARD				PLATFORM									
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres	
FINA	are in Metres	1.80		1.80		0.75		1.25		1.25		1.50		1.50	
DIMENSIONS FOR	LENGTH	4.80		4.80		4.50		5.00		6.00		6.00		6.00	
DIVING FACILITIES	WIDTH	0.50		0.50		0.60		1.50		1.50		1.50		2.00	
Revised to 1st Jan 1987	HEIGHT	1.00		3.00		0.60-1.00		2.60-3.00		5.00		7.50		10.00	
		HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT
A From plumbet BACK TO POOL WALL	DESIGNATION	A-1		A-3		A-1P1		A-3P1		A-5		A-7.5		A-10	
	MINIMUM	1.80		1.80		0.75		1.25		1.25		1.50		1.50	
A/A From plumbet BACK TO PLATFORM Plumbet directly below	DESIGNATION									AA5/1		AA7.5/3/1		AA10/5/3/1	
	MINIMUM									1.50		1.50		1.50	
B From plumbet to POOL WALL AT SIDE	DESIGNATION	B-1		B-3		B-1p1		B-3p1		B-5		B-7.5		B-10	
	MINIMUM	2.50		3.50		2.30		2.90		4.25		4.50		5.25	
C From plumbet to ADJACENT PLUMMET	DESIGNATION	C-1/1		C-3/3/1		C-1/1p1		C-3/1P1/3p1		C-5/3/1		C-7.5/5/3/1		C-10/7.5/5/3.	
	MINIMUM	2.40		2.60		1.65		2.10		2.50		2.50		2.75	

FINA	Dimensions	SPRINGBOARD				PLATFORM									
	are in Metres	1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres	
D From plummet to POOL WALL AHEAD	DESIGNATION	D-1		D-3		D-1p1		D-3p1		D-5		D-7.5		D-10	
	MINIMUM	9.00		10.25		8.00		9.50		10.25		11.00		13.50	
E On plummet, from BOARD TO CEILING	DESIGNATION		E-1		E-3		E-1p1		E-3p1		E-5		E-7.5		E-10
	MINIMUM		5.00		5.00		3.50		3.50		3.50		3.50		5.00
F CLEAR OVERHEAD behind and each side of plummet	DESIGNATION	F-1	E-1	F-3	E-3	F-1p1	E-1p1	F-3p1	E-3p1	F-5	E-5	F-7.5	E-7.5	F-10	E-10
	MINIMUM	2.50	5.00	2.50	5.00	2.75	3.50	2.75	3.50	2.75	3.50	2.75	3.50	2.75	5.00
G CLEAR OVERHEAD ahead of plummet	DESIGNATION	C-1	E-1	C-3	E-3	G-1p1	E-1p1	G-3p1	E-3p1	G-5	E-5	G-7.5	E-7.5	G-10	E-10
	MINIMUM	5.00	5.00	5.00	5.00	5.00	3.50	5.00	3.50	5.00	3.50	5.00	3.50	6.00	5.00
H DEPTH OF WATER at plummet	DESIGNATION		H-1		H-3		H-1p1		H-3p1		H-5		H-7.5		H-10
	MINIMUM		3.50		3.80		3.30		3.60		3.80		4.50		5.00
J DISTANCE AND DEPTH K ahead of plummet	DESIGNATION	J-1	K-1	J-3	K-3	J-1p1	K-1p1	J-3p1	K-3p1	J-5	K-5	J-7.5	K-7.5	J-10	K-10
	MINIMUM	5.00	3.40	6.00	3.70	5.00	3.20	6.00	3.50	6.00	3.70	8.00	4.40	11.00	4.75
L DISTANCE AND DEPTH M each side of plummet	DESIGNATION	L-1	M-1	L-3	M-3	L-1p1	M-1p1	L-3p1	M-3p1	L-5	M-5	L-7.5	M-7.5	L-10	M-10
	MINIMUM	1.50	3.40	2.00	3.70	1.40	3.20	1.80	3.50	4.25	3.70	4.50	4.40	5.25	4.75
N MAXIMUM SLOPE TO REDUCE DIMENSIONS beyond full requirements	POOL DEPTH CEILING HT	30 degrees 30 degrees		NOTE Dimensions C (plummet to adjacent plummet) apply for Platform with widths as detailed. For wider Platforms increase C by half the additional width(s)											

(d) Have adequate handholds around the perimeter in pools designed for extended swimming and bathing activity and excluding wave pools; and

(e) Stairs, ladders, or stepholes with:

(i) Stairs, when provided, meeting the following construction requirements:

(A) Treads of a nonslip finish;

(B) Stair tread edges colored to contrast with the color of the pool and clearly visible to the users;

(C) Recessed in pool areas used for lap swimming or provided with wave action; and

(D) Equipped with handrails extending over the edge of the deck.

(ii) Ladders or stepholes which:

(A) Furnish exit from pools greater than four feet in depth except in landing pools bringing the user toward a shallow area after entering the water;

(B) Are spaced a minimum of one for every fifty feet of pool perimeter greater than four feet deep;

(C) Are provided at both sides of the deep end in pools over thirty feet in width; and

(D) Are equipped with a handrail at the top of both sides extending over the coping or edge of the deck.

(iii) User access at the shallow end of pool.

(6) Owners shall ensure treatment turnover at rates no less than designated as follows:

(a) In receiving pools for water slides, water tubes, inner tube rides, speed slides or tubes, drop slides or tubes, and kiddie flume slides, treatment turnover time can be based on any of the following:

(i) Total attraction volume in one-hour period;

(ii) Treatment turnover equals design peak usage (maximum users per hour) expressed in gpm;

(iii) A rate of one hour for 20,000 gallons per two or less attraction segments. Treatment turnover times may increase proportionately for larger pool volumes per two or less attraction segments;

(iv) Alternative methods where provisions to reduce contaminants are justified to the satisfaction of the department or local health officer; and

(v) Treatment turnover times not to exceed six hours.

(b) For wave pools, a minimum treatment turnover time of two hours; and

(c) For activity pools, a minimum treatment turnover time of four hours.

(7) Owners shall provide pool inlets which are:

(a) Submerged and located to produce uniform circulation of water and chemicals throughout the pool; and

(b) Located on the bottoms of pools greater than two thousand five hundred square feet, unless otherwise justified by the engineer to the satisfaction of the department or local health officer.

(8) Except as provided in (d) and (e) of this subsection owners shall provide pool outlets with:

(a) Overflow and main drain systems with each designed to carry one hundred percent of total recirculation filter flow;

(b) Overflow outlets that have:

(i) Design to maintain a minimum of sixty percent of filter recirculation flow at all times;

(ii) An overflow channel on the pool perimeter to promote uniform circulation and skimming action of the upper water layer for pools greater than twenty-five hundred square feet, with:

(A) Design preventing matter entering channel from returning to the pool;

(B) Dimensions minimizing the hazard for bathers, such as catching arms or feet in an overflow channel;

(C) 0.01 foot slope per foot or more;

(D) Drains sufficiently spaced and sized to collect and remove overflow water to return line to filter where applicable;

(E) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow equivalent to one-fifth of the balancing tank expressed in gallons per minute.

(iii) Skimmers, when used on pools up to twenty-five hundred square feet, if:

(A) Demonstrated to operate properly under design conditions;

(B) Turbulence is not expected to interfere with operation;

(C) Maximum flow rate through skimmers does not exceed four gpm per inch of weir;

(D) Devices are recessed in the wall of the pool so that no part protrudes beyond the plane of the wall into the pool;

(E) The skimmer is equipped with a device to prevent air lock in the recirculation suction line (i.e., an equalizer line). If equalizer lines are used they must be protected with suction outlets that conform to the ((ASME A112.19.8)) suction fitting standard; and

(F) The skimmer is equipped with a removable and cleanable screen designed to trap large solids.

(iv) Sidewall channels, when used on pools up to twenty-five hundred square feet, which accept the total recirculation volume of the pool through the upper side of the pool if:

(A) Overall flow through the channel exceeds four times the treatment recirculation rate;

(B) Design of channel prevents entrapment of the user;

(C) Openings of any screens have less than one-half inch slots;

(D) Channel openings do not allow access beyond the pool, except with the use of specific tools requiring their opening;

(E) Open area of screens prevent a suction or entrapment hazard which could be dangerous to the user; and

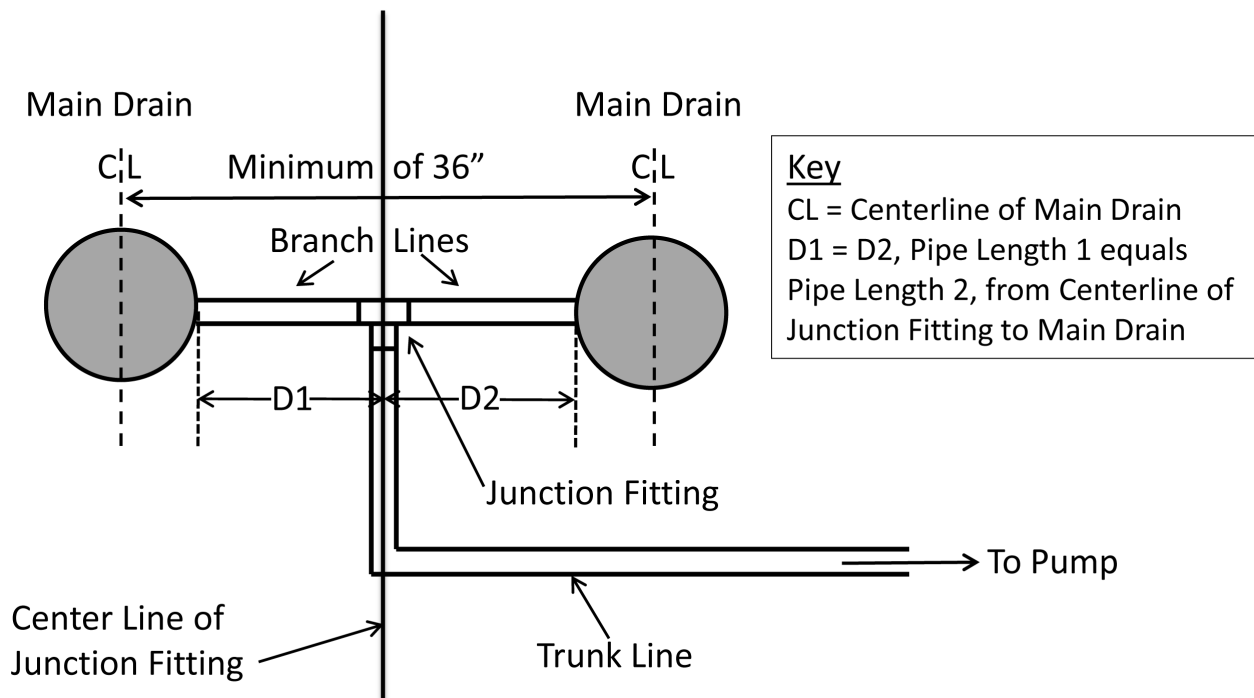
(F) The channel provides an action pulling water from the top of the pool to remove floatable debris and oils.

(c) Main drains in all pools must:

(i) Be located at the low points of the pool;

(ii) Have piping that is manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting; see Figure 3

FIGURE 3:  
Main Drain Branch Line Piping Detail.



(iii) Have a minimum of two main drains spaced at least three feet apart, measured between the centers of the drain covers;

(iv) Conform to the ((ASME A112.19.8)) suction fitting standard;

(v) Have covers with a maximum flow of 1.5 feet per second;

(vi) Be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 5

(vii) Have means to control flow from recirculation pump or balancing tank.

TABLE 5  
MAIN DRAIN FLOW RATING REQUIREMENTS

	Number of Main Drains Per Recirculation System			
	2	3	4	5
Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.	100%	50%	33.3%	25%

(d) Existing recreational water contact facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met;

(e) New recreational water contact facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met.

(9) Owners shall maintain recirculation flow which:

(a) Does not exceed six feet per second in suction or valved discharge side of pump; and

(b) Does not exceed ten feet per second in open discharge pipes on the pressure side of the pump or filter discharge. This limit does not apply to the return inlet and the last two feet of pipe leading to the inlet.

(10) Owners shall provide a surge chamber or surge area in RWCFs with an entry pool to:

(a) Accommodate at least two minutes of the total turnover; and

(b) Maintain proper water levels for treatment and operation of the attraction.

(11) Owners having RWCFs with overflow channels requiring balancing tanks shall:

(a) Maintain volume equivalent to fifteen times maximum bathing load expressed in gallons; and

(b) Increase capacity as necessary to provide volume for make-up water and to prevent air lock in the pump suction line.

(12) Owners shall have and maintain recirculation pumps with adequate capacity to:

(a) Provide design flows and pressure for recirculation of the RWCF water over the entire operating pressure of the filter;

(b) Allow proper capacity for backwashing of filters when specified; and

(c) Have self-priming capability when installed above the pool water level.

(13) Where pumps precede the filter, owners shall install hair and lint strainers, which shall:

(a) Be located upstream of recirculation pumps;

(b) Be of corrosion-resistant material sufficiently strong to prevent collapse when clogged;

(c) Have an operable cover; and

(d) Provide valving to isolate the strainer when located below pool water level.

(14) Owners shall provide valves at appropriate locations to allow isolation and maintenance of equipment.

(15) Owners shall provide equipment rooms which:

(a) Enclose pumps, disinfection equipment, filters, and other electrical and mechanical equipment and associated chemicals;

(b) Provide adequate working space and access to perform routine operations;

(c) Provide lighting and ventilation of the equipment room; and

(d) Are not accessible to the public.

(16) Owners shall ensure the source of make-up water and associated piping in the RWCF:

(a) Provides sufficient quantity to replace daily losses from the pool;

(b) Comes from a supply conforming with chapter 246-290 WAC; and

(c) Prevents cross-connections using a minimum air gap of two pipe diameters or approved backflow prevention devices between the make-up water source and the RWCF attraction water or waste water.

(17) Owners shall equip RWCFs with filtration equipment which:

(a) Meets the applicable standards of NSF or equivalent;

(b) Uses acceptable types and filter rates described in Table 6 of this section:

TABLE 6  
FILTER TYPES AND ACCEPTABLE RATES

Type of Filter	Range of Acceptable Filter Rate Expressed in gpm/sq. ft.		
	Minimum	Maximum*	
Sand			
Rapid & pressure	—	3	
Pressure high rate	10	18	
Vacuum high rate	10	18	
DE	Continuous feed	Manual feed	
Vacuum	0.8	1.0	2.0
Pressure	1.0	1.35	2.0
Cartridge**			
Applied in temperature ranges:			
<95°F.	—	0.375	
>95°F.	—	0.188	

Note: \* Filters sized at maximum application rate shall use flow control valves.

\*\* Cartridge filters shall have a nominal micron rating of twenty microns or less.

(c) Has pressure or vacuum gauges for measuring loss of head (pressure) through the filter with minimum of one gauge preceding and one gauge following the filter;

(d) Has a flow indicator to measure treatment turnover; and

- (e) Has means of discharging filter backwash to waste with:
  - (i) Discharge in a manner not creating a public nuisance;
  - (ii) Disposal in accordance with applicable local law or regulation;
  - (iii) Minimum air gap of two pipe diameters to prevent cross-connection from waste discharge and recirculation system piping;
  - (iv) Discharge receptor and piping of sufficient size to accept backwash water and prevent flooding; and
  - (v) Provisions to monitor filter effluent during backwash.
- (18) Owners shall provide disinfection equipment which:
  - (a) Provides a continuous and effective residual of disinfectant in the water;
  - (b) Uses a disinfectant with a residual that is easily monitored;
  - (c) Conforms with NSF standards when liquid or solid feed materials are used;
  - (d) Has a design feed rate which will provide effective disinfection levels when RWCFs are in use;
  - (e) Meets the following conditions if chlorine gas is used:
    - (i) Chlorine rooms shall:
      - (A) Be above ground level;
      - (B) Be constructed so all openings or partitions with adjoining rooms are sealed;
      - (C) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the RWCF;
      - (D) Have door opening outward only and to the out-of-doors.
    - (ii) Mechanical exhaust ventilation of the chlorine room including:
      - (A) Air inlet located as far as possible from fan intake to promote good air circulation patterns;
      - (B) Minimum of one air change per minute in the chlorine room when fan is operating;
      - (C) A remote switch outside the room or a door-activated switch to turn on fan prior to entering;
      - (D) Suction for fan near the floor; and
      - (E) Exhaust for fan and chlorinator vent located to prevent contaminating air intakes or prevent undue hazard for the users of the RWCF.
    - (iii) Gas chlorine systems which:
      - (A) Are vacuum injection type, with vacuum actuated cylinder regulators; and
      - (B) Provide adequate-sized backflow and anti-siphon protection at the ejector.
      - (iv) Breathing protection available in an accessible area for the operator outside of the chlorine room including:
        - (A) Instructions about limitations with chlorine concentrations and concentrations of oxygen if chlorine-type canister masks are used; and
        - (B) Self-contained breathing apparatus designed for use in a chlorine atmosphere as preferred equipment for working with chlorine leaks.
      - (v) Means for automatic shutoff when the recirculation filter pump is off or flow to the pool is interrupted;
      - (vi) Chlorine gas cylinders shall:
        - (A) Be stored only in chlorine rooms; and
        - (B) Not exceed one hundred fifty pounds tare weight per cylinder; except, wave pools, where one-ton cylinders may be used. Only a single, one-ton cylinder shall be stored on the premise at any time.
  - (19) Owners applying chemicals other than disinfectant shall provide chemical feed equipment with:
    - (a) Adequate size and design to allow routine cleaning and maintenance;
    - (b) Materials resistant to action of the chemicals to be used; and
    - (c) Means for automatic shut off when the recirculation filter pump is off or flow to the pool is interrupted.
  - (20) Owners shall have testing equipment to provide means for measuring disinfectant residuals, pH, alkalinity, and any other chemicals used routinely in the RWCF water. In pools where compressed chlorine gas is used, means to detect leaks shall be provided, i.e., use of proper strength ammonia vapor.
  - (21) Owners shall provide easily accessible change room facilities at all RWCFs with:
    - (a) Dressing rooms, showers, toilets, urinals, and sinks;
    - (b) Change room design including:
      - (i) Separate facilities for both sexes;
      - (ii) Floors of a nonslip finish with suitable drains;
      - (iii) Junctions between walls and floors coved for ease of cleaning;
      - (iv) Adequate ventilation to prevent build-up of moisture in the facility; and
      - (v) Provisions to minimize cross traffic with nonusers.
    - (c) Plumbing fixtures as described in Table 7 of this section.

TABLE 7  
MINIMUM PLUMBING FIXTURE REQUIREMENTS  
BASED ON MAXIMUM PEAK PERIOD OCCUPANCY

Type of Fixture	Occupancy/Sex	Number of Fixtures Required Per Occupancy Load	
		Male	Female
1. Toilets	First 600	1/200	1/100
	Portion exceeding 600	1/450	1/300
2. Urinals	First 600	1/200	-
	Portion exceeding 600	1/450	-
3. Showers	First 300	1/100	1/100
	Portion exceeding 300	1/200	1/200
4. Sinks	First 400	1/200	1/200
	Next 350	1/350	1/350
	Portion exceeding 750	1/500	1/500
5. Hose bibs		1 accessible to change rooms	
6. Janitor sink		1 within the RWCF	

- (d) Showers:
    - (i) Delivering water at a temperature range between ninety and one hundred ten degrees Fahrenheit; and
    - (ii) Providing liquid or powdered soap in nonglass dispensers.
  - (e) Flush toilets and toilet tissue in dispensers;
  - (f) Sinks providing:
    - (i) Tempered or hot and cold running water,
    - (ii) Liquid or powdered soap in nonglass dispensers, and
    - (iii) Disposable towels or electric hand dryers.
  - (g) Sewage disposed of in a manner approved by the department or local health officer; and
  - (h) Hose bibs with vacuum breakers provided at convenient locations.
- (22) Owners shall design and maintain lighting at RWCF attractions or change rooms to:
- (a) Illuminate indoor attractions, outdoor attractions used after dusk, or change rooms with a minimum lighting intensity maintained thirty inches above any walking surface, pool deck, or pool area of:
    - (i) Thirty foot-candles at indoor facilities;
    - (ii) Fifteen foot-candles at outdoor facilities; or
    - (iii) Twenty foot-candles in change rooms.
  - (b) Allow lifeguards or attendants to clearly see every part of pool waters and walking surfaces; and
  - (c) Meet any additional lighting requirements deemed necessary by the department or local health officer.
- (23) Owners shall provide first-aid facilities in every RWCF including:
- (a) A twenty-four package first-aid kit per WAC 296-24-065;
  - (b) Two or more blankets reserved for emergency use;
  - (c) A telephone with a prominently displayed list of emergency medical service response numbers;
  - (d) A backboard meeting the specifications of the ARC; and
  - (e) Sufficient and suitable area to accommodate persons requiring treatment and necessary first-aid equipment.
- (24) Owners shall provide signs at RWCF entrances and change rooms. Any combination of words, pictures, or symbols may be used to convey the following conditions:
- (a) Prohibition of use by persons with communicable diseases;
  - (b) Prohibition of use by persons under the influence of alcohol or drugs;
  - (c) Requirement for a cleansing shower before entering the attractions;
  - (d) Warning that persons refusing to obey the attendants are subject to removal from the premises; and
  - (e) Prohibition of food and drink in pool, change room, or on walking surfaces.
- (25) If owners allow or make provision for food service:
- (a) Food and beverage sale and consumption areas shall be separate from pool, change room, and walking surfaces;
  - (b) Trash containers shall be provided; and
  - (c) No glass containers shall be allowed in the RWCF.
- (26) Owners shall prevent users or spectators access to mechanical, electrical, or chemical equipment facilities.

(27) Owners shall provide an operable drinking fountain of the angle jet type design meeting the requirements of the American Standards Association.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

**WAC 246-262-130 Notice of decision—Adjudicative proceeding.** ~~((1) A hearing requested to contest a local health officer's action shall be governed by the local health jurisdiction's rules for hearings.~~

~~(2)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with section 377, chapter 3, Laws of 1991. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.~~

~~(b) A department notice of imposition of a civil fine shall be consistent with section 378, chapter 3, Laws of 1991. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.~~

~~(c) A license applicant or holder or a person the department imposes a fine on contesting a department decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Administrative Hearings Unit, Department of Health, 1300 Quince Street, S.E., Mailstop: EY-17, Olympia, WA 98504; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the department decision; and~~

~~(C) A copy of the contested department decision.~~

~~(d) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-08 WAC. If a provision in this chapter conflicts with chapter 246-08 WAC, the provision in this chapter governs.)~~

A person aggrieved by the department's or local health officer's denial, suspension, modification, or revocation of a license, issuance of an order, or levy of a civil penalty may request an administrative hearing.

(1) A hearing requested to contest a local health officer's action is governed by the local health jurisdiction's rules for hearings.

(2) A hearing requested to contest a department action is governed by chapters 246-10 WAC and 34.05 RCW.

### WSR 12-17-107

#### PERMANENT RULES

#### SUPERINTENDENT OF

#### PUBLIC INSTRUCTION

[Filed August 20, 2012, 10:57 a.m., effective September 20, 2012]

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

Purpose: WAC 392-121-182 requires updating to clarify questions resulting from last year's rewrite of this WAC and address new requirements. This rule change updates the differential funding model to include the 2012-13 school year, as required by the current state budget.

Definitions for "in-person instructional contact" and "school week" are added. The requirement to report student-teacher ratios and the requirement for alternative learning experience programs to certify their intent to provide minimum in-person instructional contact time has been removed.

Clarification is provided for the requirement of direct personal contact - adding options of in-person instructional and synchronous instructional contact to meet this requirement. The rule change also clarifies the language regarding adjusting monthly enrollment reporting when an intervention plan is not in place within five school days.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.305.

Adopted under notice filed as WSR 12-12-079 on June 6, 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 0, Repealed 0.

Date Adopted: July 12, 2012.

Randy Dorn  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 11-17-147, filed 8/24/11, effective 9/1/11)

**WAC 392-121-182 Alternative learning experience requirements.** (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience on-line program as defined in RCW 28A.150.262.

It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means:

(A) A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and

(B) The student pursues the requirements of the written student learning plan in whole or in part independently from a regular classroom setting or schedule, but the learning plan may include some components of direct instruction; and

(C) The student's learning is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(ii) The broad categories of alternative learning experience programs include, but are not limited to:

(A) On-line programs as defined in RCW 28A.150.262;

(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

(C) Contract based learning programs.

(b) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(c) "Written student learning plan" means a written plan for learning that is developed and approved by a certificated teacher (~~that~~) and defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) A description of how weekly direct personal contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual

published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan(, and);

(ii) Must be related to an alternative learning experience course identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented(,);

(e) "Satisfactory progress" means a certificated teacher has determined that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher;

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of direct personal contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which direct personal contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Substantially similar experiences and services" means that for each purchased or contracted instructional or occurrucular course, lesson, trip, or other experience, service,

or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(h) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive on-line, voice, or video communication technology(,). The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students.

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(j) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.

(k) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session.

**(4) Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties.



(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact:

(i) Direct personal contact with a certificated teacher at least once a school week, until the student completes all course objectives or otherwise meets the requirements of the learning plan; or

(ii) In-person instructional contact according to the following time requirements:

(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;

(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and

(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week; or

(iii) For students whose written student learning plan includes only on-line courses as defined by RCW 28A.250-.010, synchronous digital instructional contact according to the following time requirements:

(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;

(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and

(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher and the results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student. Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(iii) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(iv) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(v) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and

implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) **Required school district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) **Alternative learning experience implementation requirements:**

(a) School districts that offer alternative learning experiences must ensure that they are accessible to all students, including students with disabilities. Alternative learning experiences for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experiences is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience program.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experiences must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experiences must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience programs if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. However, nothing in this subsection prohibits school districts from contracting with on-line providers pursuant to chapter 28A.250 RCW.

(j)(i) A school district that provides one or more alternative learning experiences to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods

may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(n) State funded alternative learning experience on-line programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.

(o) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) Alternative learning experience courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

**(7) Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's (~~prior month~~) progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in ~~((that month's))~~ the enrollment count for the month of the evaluation that showed the lack of satisfactory progress.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) School districts ~~((providing))~~ claiming alternative learning experiences ~~((to))~~ students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.-225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

**(8) Differentiated funding:** For the 2011-12 and 2012-13 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience on-line programs under RCW 28A.150.262, in addition to the direct personal

contact requirements specified in subsection (4) of this section, each student receives either:

(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in ~~((e))~~ (d) of this subsection; or

(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in ~~((e))~~ (d) of this subsection if the student's written student learning plan includes only on-line courses as defined by RCW 28A.250.010.

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in ~~((e))~~ (d) of this subsection;

(c) The instructional contact time must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan~~(;~~

(d) ~~The district certifies monthly); and~~

(ii) ~~Related to ((the superintendent of public instruction that the)) an alternative learning experience ((program is designed and implemented)) course identified in ((a manner that will accomplish such contact requirements))~~ the written student learning plan;

~~((e))~~ (d) Using the estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)~~((iii))~~ (ii) of this section:

(i) For students whose learning plan includes an estimate of five hours per school week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;

(ii) For students whose learning plan includes an estimate of more than five hours per school week but less than sixteen hours per school week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;

(iii) For students whose learning plan includes an estimate of more than fifteen hours per school week, on average at least one hour of contact per school week during each month of reported enrollment for the student.

**(9) Assessment requirements:**

(a) All students enrolled in alternative learning experiences must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal

accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience schools, programs, or courses who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

**(10) Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

**(11) Reporting requirements:**

(a) Each school district offering alternative learning experiences must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experiences must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experiences must report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section. The annual report shall identify the ~~((ratio))~~ number of certificated instructional staff ~~((to))~~ full-time equivalent ~~((students enrolled in))~~ assigned to each alternative learning experience ~~((courses or))~~ program(s). The annual report shall separately identify alternative learning experience enrollment of students provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

**(12) Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (11) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of ~~((direct personal))~~ weekly contact required by subsection (4) of this section.

(i) Evidence of direct personal contact must include the date of the direct personal contact, the method of communication by which the direct personal contact was accomplished, and documentation to support the subject of the communication.

(ii) For students receiving either in-person instructional contact time or synchronous digital instructional contact time, evidence may include classroom attendance records;

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state;

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section; and

(j) Evidence of face-to-face contact required in subsection (8)(a) of this section.

**WSR 12-17-111  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 20, 2012, 12:02 p.m., effective September 20, 2012]

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

Purpose: WAC 392-121-188 Instruction provided under contract requires updating to align with purchasing individual on-line courses and the rule change already in place for WAC 392-121-182. The proposed changes will clarify the requirements for these emerging practices.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-188.

Statutory Authority for Adoption: RCW 28A.150.305.

Adopted under notice filed as WSR 12-12-077 on June 6, 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 0, Repealed 0.

Date Adopted: July 12, 2012.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-188 Instruction provided under contract.** School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for on-line courses purchased by the school district from an on-line provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control(-);

(5) The contractor (~~serves the students at no cost to~~) charges the student (~~for~~) no tuition (~~and fees and~~) for enrollment;

(6) Enrollment is voluntary (~~and no~~);

(7) No student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

~~((6))~~ (8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

~~((7))~~ (9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section(-);

~~((8))~~ (10) The curriculum is approved by the district. District approval for on-line course curriculum is not required for on-line courses offered by an on-line provider approved by the superintendent of public instruction under RCW 28A.250.020;

~~((9))~~ (11) The contractor provides enrollment reports to the school district that comply with this chapter;

~~((10))~~ (12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

~~((11))~~ (13) If a contractor certificated employee employed by a contractor other than an institution of higher education ((at any time during the school year serves)) spends more than twenty-five (~~students which equals more than one quarter of one~~) percent (~~((.0025) of the district's annual average))~~ of a full-time equivalent (~~enrollment claimed for basic education funding the~~) time with students for a given school district ((reports the certificated instructional employees of the contractor funded with any state moneys or federal moneys that flow through)) at any time during the school year, the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

~~((12) If the contract is with an entity other than an institution of higher education, for the students served pursuant to the contract, the contractor maintains a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade level of the students being reported for basic education funding pursuant to this section;~~

~~((13))~~ (14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase on-line courses through the on-line course catalog provided by the office of superintendent of public instruction are exempt from this provision;

~~((14))~~ (15) The school district and contractor establish a process for periodic (~~on-site~~) monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase on-line courses through the on-line course catalog provided by the office of superintendent of public instruction are exempt from this provision;

~~((15))~~ (16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

~~((16))~~ (17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

~~((17) When a school district contracts for an alternative learning experience program and the contractor exercises primary responsibility for the student's written learning plan, the program shall be for academically at-risk students and shall comply with RCW 28A.150.305. Enrollment in these programs shall be reported pursuant to WAC 392-121-182.)~~

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

### WSR 12-17-113

#### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed August 21, 2012, 8:50 a.m., effective September 21, 2012]

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

Purpose: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of ESB 6296. The changes include, but may not be limited to, updating the language to allow for an individual to obtain a copy of their nonconviction criminal history for a fee.

Citation of Existing Rules Affected by this Order: Repealing 1 [WAC 446-16-030].

Statutory Authority for Adoption: RCW 10.97.080 and [10.97.]090.

Adopted under notice filed as WSR 12-13-081 on June 19, 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 1.

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

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

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

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

Date Adopted: August 17, 2012.

John R. Batiste  
Chief

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 446-16-030

Inspection by the subject of their record.

### WSR 12-17-114

#### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed August 21, 2012, 8:50 a.m., effective September 21, 2012]

Effective Date of Rule: Immediately.

Purpose: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of ESB 6296. The changes include, but may not be limited to, updating the language to allow for an individual to obtain a copy of their nonconviction criminal history for a fee.

Citation of Existing Rules Affected by this Order: Amending 6 [WAC 446-20-090, 446-20-100, 446-20-285, 446-20-300, 446-20-310, and 446-20-600].

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Adopted under notice filed as WSR 12-13-082 on June 19, 2012.

Changes Other than Editing from Proposed to Adopted Version: Removed language under WAC 446-20-285(2).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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: August 17, 2012.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-090 Inspection of record by the subject of record.** (1) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol identification and criminal history section, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, will be allowed each individual to visually examine criminal history record information pertaining to himself or herself.

~~(4) ((Visual examination only will be permitted of such information unless the individual asserts the belief that their criminal history record information is inaccurate, or incomplete, and unless the person requests correction or completion of the information on a form furnished by the criminal justice agency, or requests deletion pursuant to RCW 10.97.060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.~~

~~(5))~~ If any person who desires to examine his or her criminal history record information is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of their own choice to assist him or her. The person about whom the information pertains must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

~~((6))~~ (5) Each criminal justice agency will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-100 Inspection—Timeliness and manner of agency response.** (1) A criminal justice agency not maintaining criminal history record information of the indi-

vidual requesting inspection will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the section, the agency must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the section, the agency upon request of the subject of the record, must forward the request to the section for processing.

(c) The section will copy all Washington state criminal history record information in the files of the section relating to the individual requester and forward it to the criminal justice agency submitting the request. The section may provide a copy of the individual's nonconviction data directly to the subject of record upon written request from the individual for a reasonable fee.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information, the agency will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-285 Employment—Conviction records**~~((—Child and adult abuse information))~~. ~~((After January 1, 1988, certain child and adult abuse))~~ Conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes ~~((against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW)); and~~

~~((Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision for the businesses and professions defined in chapter 9A.44 RCW; and~~

~~(3))~~ Criminal history information will be furnished from the section, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The section will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the section, and must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, or equivalent response from a federal law enforcement agency shows no evidence of crimes (~~(against persons)~~), an identification declaring the showing of no evidence will be issued to the business or organization by the section within fourteen working days of receipt of the request. Possession of such identification will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer must provide a copy of the response to the applicant and must notify the applicant of such availability.

(f) The business or organization will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

**AMENDATORY SECTION** (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-300 Privacy—Security.** (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, must comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records (~~(of crimes against persons)~~) or disciplinary board final decision information must comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization must use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

**AMENDATORY SECTION** (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-310 Audits.** (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815 must comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the recordkeeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records (~~(of crimes against persons)~~) or disciplinary board final decision information may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

**AMENDATORY SECTION** (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-600 Fees.** (1) A nonrefundable fee must accompany each request for conviction records submitted for a name and date of birth background check or a background check requested by fingerprint search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee will be charged for fingerprint cards submitted for federal searches. It will be the responsibility of the section to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee will be charged for taking fingerprint impressions by the section. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) A reasonable fee will be charged for a request for nonconviction data in lieu of a record review pursuant to RCW 10.97.080.

(5) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The section must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

~~((5))~~ (6) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a non-profit organization, or volunteers in school districts and educational service districts for background checks.



**WSR 12-17-115**  
**PERMANENT RULES**  
**WASHINGTON STATE PATROL**

[Filed August 21, 2012, 8:51 a.m., effective September 21, 2012]

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

Purpose: Rule changes are to add an effective date for the federal standards referenced regarding vehicle equipment. Updates are to coincide with the recommended practice for rule writing regarding the referencing of statutes of another jurisdiction.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 204-10-021].

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Adopted under notice filed as WSR 12-10-023 on April 23, 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 17, 2012.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

**WAC 204-10-021 Adoption of federal standards.** The Washington state patrol adopts by reference Title 49 Code of Federal Regulations (CFR) Part 571 Federal Motor Vehicle Safety Standards (FMVSS) (~~and any amendments thereto~~) for vehicle equipment standards. The patrol adopts the version of FMVSS in effect on the effective date of this section unless otherwise prescribed under state law. The FMVSS as outlined in Title 49 CFR 571 are as follows:

1. 101 - Controls and displays.
2. 102 - Transmission shift lever sequence, starter interlock, and transmission brake effect.
3. 103 - Windshield defrosting and defogging systems.
4. 104 - Windshield wiping and washing system.
5. 105 - Hydraulic and electric brake systems.
6. 106 - Brake hoses.
7. 108 - Lamps, reflective devices, and associated equipment.
8. 109 - New pneumatic tires.
9. 110 - Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

10. 111 - Rearview mirrors.
11. 113 - Hood latch system.
12. 114 - Theft protection.
13. 116 - Motor vehicle brake fluids.
14. 117 - Retreaded pneumatic tires.
15. 118 - Power-operated window, partition, and roof panel systems.
16. 119 - New pneumatic tires for vehicles other than passenger cars.
17. 120 - Tire selection and rims for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).
18. 121 - Air brake systems.
19. 122 - Motorcycle brake systems.
20. 123 - Motorcycle controls and displays.
21. 124 - Accelerator control systems.
22. 125 - Warning devices.
23. 129 - New nonpneumatic radial tires for light vehicles.
24. 131 - School bus pedestrian safety devices.
25. 135 - Light vehicle brake systems.
26. 138 - Tire pressure monitoring systems.
27. 139 - New pneumatic radial tires for light vehicles.
28. 201 - Occupant protection in interior impact.
29. 202 - Head restraints; mandatory applicability begins on September 1, 2008.
30. 203 - Impact protection for the driver from the steering control system.
31. 204 - Steering control rearward displacement.
32. 205 - Glazing materials.
33. 206 - Door locks and door retention components.
34. 207 - Seating systems.
35. 208 - Occupant crash protection.
36. 209 - Seat belt assemblies.
37. 210 - Seat belt assembly anchorages.
38. 212 - Windshield mounting.
39. 213 - Child restraint systems.
40. 214 - Side impact protection.
41. 216 - Roof crush resistance.
42. 217 - Bus emergency exits and window retention and release.
43. 218 - Motorcycle helmets.
44. 219 - Windshield zone intrusion.
45. 220 - School bus roll-over protection.
46. 221 - School bus body joint strength.
47. 222 - School bus passenger seating and crash protection.
48. 223 - Rear impact guards.
49. 224 - Rear impact protection.
50. 225 - Child restraint anchorage systems.
51. 301 - Fuel system integrity.
52. 302 - Flammability of interior materials.
53. 303 - Fuel system integrity of compressed natural gas vehicles.
54. 304 - Compressed natural gas fuel container integrity.
55. 305 - Electric-powered vehicles: Electrolyte spillage and electrical shock protection.
56. 401 - Internal trunk release.
57. 403 - Platform lift systems for motor vehicles.
58. 404 - Platform lift installations in motor vehicles.

59. 500 - Low speed vehicles.

Links to 49 CFR 571 are available on the Washington state patrol web site at [www.wsp.wa.gov](http://www.wsp.wa.gov). Copies of the CFR may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

**WSR 12-17-116**  
**PERMANENT RULES**  
**WASHINGTON STATE PATROL**

[Filed August 21, 2012, 8:51 a.m., effective September 21, 2012]

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

Purpose: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of SSB 6112. The changes include, but may not be limited to, updating the language to reference an alternative traction device and outline the testing/certification process for such a device to be considered in the state of Washington.

Citation of Existing Rules Affected by this Order: Amending 5 [WAC 204-24-005, 204-24-010, 204-24-040, 204-24-050, and 204-24-070].

Statutory Authority for Adoption: RCW 46.37.420.

Adopted under notice filed as WSR 12-13-080 on June 19, 2012.

Changes Other than Editing from Proposed to Adopted Version: Under WAC 204-24-035 (1)(a) changed the required test language to be specific to passenger cars and commercial vehicles as one of the tests is optional for a commercial vehicle.

Under WAC 204-24-035 (1)(d)(i) removed the language "A copy of."

Under WAC 204-24-035 (1)(d)(iv) added "If testing cannot be done according to the published standard, companies may self-certify any supplemental tests necessary to comply with the requirements in this section, provided that the data from the tests is confirmed by a third-party testing agency. The patrol may request that the data be provided by the third-party testing agency directly."

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 5, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 5, 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: August 17, 2012.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

**WAC 204-24-005 Promulgation.** By authority of RCW 46.37.005 and 46.37.420, the Washington state patrol adopts the following standards for tire chains and traction (~~((tires))~~) devices.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

**WAC 204-24-010 Scope.** These standards apply to tire chains and traction (~~((tires))~~) devices designed for and used upon a public roadway.

NEW SECTION

**WAC 204-24-035 Standards for alternative traction devices.** (1) In order for an alternative traction device to be considered approved:

(a) The alternative traction device must be tested in accordance with a recognized standard on vehicles certified by its manufacturer as complying with the United States Federal Motor Vehicle Safety Standards. The testing will:

(i) Be conducted using USDOT approved summer tires.

(ii) For passenger vehicles, at minimum:

(A) Be done on both front and rear wheel drive vehicles with the device mounted on only the drive tires.

(B) Include the following tests:

(I) Durability testing of the product;

(II) Acceleration on both snow and ice;

(III) Deceleration on both snow and ice; and

(IV) Traction force of the product on snow.

(ii) For vehicle combinations over 10,000 pounds as outlined in WAC 204-24-050(2), at minimum:

(A) Be done on a five axle vehicle with the device on one tire on each side of each drive axle and one tire on the last axle of the last trailer or semi-trailer, if seeking approval for a combination with five or less axles.

(B) Be done on a five axle vehicle with the device mounted on all tires on one drive axle and one tire on the last axle of the last trailer or semi-trailer, if seeking approval for a combination with five or more axles.

(C) Include the following tests:

(I) Durability testing of the product;

(II) Acceleration on snow and/or ice;

(III) Deceleration on snow and/or ice; and

(IV) Traction force of the product on snow.

(iv) Be done in comparison to a tire chain when tested using the same standard to show that the alternative traction device meets or exceeds the standard as compared to the results of the referenced tire chain approved for use in the state of Washington under this chapter.

(b) Alternative traction devices must cooperate well with any given electronic driving support such as ABS, ESP, and ASR.

(c) Alternative traction devices should be resistant to UV light, corrosion, water, fuels, spreading salts and alcohols typically used to clear roads during winter.

(d) The following information must be provided to the Washington state patrol:

(i) The testing standard used, in English.

(ii) Documentation of the testing results, which must include the data produced for each test comparing the alternative traction device to the referenced tire chain. Except that durability testing is not required to be provided for the referenced tire chain.

(iii) A certified statement from the company or manufacturer outlining what measurable indicator of wear can be used by an officer to indicate when the product will no longer provide adequate traction equivalent to a chain.

(iv) Review and approval by a third-party testing agency that the tests were conducted according to the published standard. If testing cannot be done according to the published standard, companies may self-certify any supplemental tests necessary to comply with the requirements in this section, provided that the data from the tests is confirmed by a third-party testing agency. The patrol may request that the data be provided by the third-party testing agency directly.

(v) Provide certification of the test results, which must contain the following statement "I certify that the test methods, conditions and results reported are accurate and complete" and bear the signature of the tester.

(2) The patrol may suspend or revoke approval for an alternative traction device upon receiving evidence that the device has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process will be used:

(a) The patrol will give the applicant or manufacturer notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to suspension or revocation of the approval, except as provided in subsection (3) of this section.

(b) Upon receiving notice of the action, the applicant or manufacturer may request an administrative hearing to contest the decision. A request for administrative hearing must:

(i) Be made in writing and mailed to the Washington State Patrol Equipment and Standards Section, P.O. Box 42600, Olympia, WA 98504-2600; and

(ii) Be received by the patrol's equipment and standards section within twenty business days after the date of the notice of action.

(c) Failure to request a hearing or failure to appear at a hearing, a prehearing conference, or any other stage of adjudicative proceeding may constitute default and result in the entry of a final order under RCW 34.05.440.

(d) Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action will be promptly instituted and determined. The patrol must give notice as practicable to the applicant or manufacturer.

(e) Unless the patrol finds the immediate revocation is necessary or unless the applicant or manufacturer timely requests a hearing as provided under this section, a decision

to revoke or suspend will be effective thirty days from the date of the notice of action decision unless that patrol finds that immediate revocation is necessary.

(3) The patrol may, without prior notification suspend or revoke approval for a device if it finds that there is danger to the public health, safety, or welfare that requires immediate action. For every summary suspension of a letter of approval, an order signed by the patrol must be entered in accordance with the provisions of RCW 34.05.479.

**AMENDATORY SECTION** (Amending WSR 09-15-150, filed 7/21/09, effective 8/21/09)

**WAC 204-24-040 Traction devices.** The following equipment items are approved by the state patrol for use as traction devices wherever traction devices are required by the department of transportation:

(1) Tire chains meeting the standards in WAC 204-24-020.

(2) Studded tires meeting the standards in WAC 204-24-030.

(3) Approved traction tires. An approved traction tire must have the following tread characteristics:

(a) A minimum of 4/32 inch tread, measured in the center portion of the tire at three locations equally spaced around the circumference of the tire.

(b) A relatively aggressive tread pattern designed primarily to provide additional starting, stopping, and driving traction on snow or ice. The tread must have ribs, lugs, blocks or buttons the edges of which are at an angle greater than thirty degrees to the tire circumferential centerline.

(c) On at least one side of the tread design, the shoulder lugs protrude at least 1/2-inch in a direction generally perpendicular to the direction of travel.

(d) Tires manufactured to meet these specifications must:

(i) Be permanently labeled on at least one sidewall with the words "mud and snow" or any contraction using the letters "M" and "S" (e.g. MS, M/S, M-S, M & S, etc.); or

(ii) Be permanently labeled on at least one side wall with the mountain/snowflake symbol.

**(4) Alternative traction devices.** Any alternative traction device approved under this chapter must be used in accordance with the manufacturer's recommendations concerning proper use of the product. The list of approved devices will be maintained on the patrol's web site. Upon suspension or revocation of an approval for an alternative traction device, the device will be removed from the list of approved devices on the patrol's web site.

**AMENDATORY SECTION** (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

**WAC 204-24-050 Use of tire chains or other traction devices.** (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's web site as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements if such vehicle has sanding capability in front of the drive tires.

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and

semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's web site as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

**AMENDATORY SECTION** (Amending WSR 10-19-073, filed 9/16/10, effective 10/17/10)

**WAC 204-24-070 Approval of tire chains or traction devices.** (1) Any tire chain, wheel chains, or studded tires meeting the standards in this chapter or certified under one of the following:

(a) Conformance to Federal Motor Vehicle Safety Standards, or, if none,

(b) Conformance to current standards and specifications of the Society of Automotive Engineers will be considered as an approved type chain, or studded tire.

(2) ~~(In order for an alternative traction device to be considered approved:~~

~~(a) The alternative traction device must be:~~

~~(i) Tested in accordance with a recognized standard; and  
(ii) Meet or exceed the standard as compared to the results of a referenced tire chain approved for use in the United States tested using the same standard.~~

~~(b) The following information must be provided to the Washington state patrol:~~

~~(i) Certification of test results, which must contain the following statement "I certify that the test methods, conditions and results reported are accurate and complete" and bear the signature of the tester.~~

~~(ii) A copy of the testing standards used.~~

~~(iii) Documentation of the testing results, which must include the data produced for each test comparing the alternative traction device to the referenced tire chain.~~

(3)) Links to the Code of Federal Regulations are available on the Washington state patrol web site at [www.wsp.wa.gov](http://www.wsp.wa.gov). Copies of the C.F.R. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street, N.W., Washington, D.C. 20401. Copies of the SAE standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096.

#### **NEW SECTION**

**WAC 204-24-080 Hearing procedure.** (1) Hearings under this chapter will be pursuant to chapters 34.05 RCW and 10-08 WAC as supplemented by this section.

(2) A presiding officer will conduct a hearing and any prehearing conference(s).

(3) The burden of proof in any hearing will be on the applicant seeking approval, or on the person or agency seeking the suspension or revocation of approval or other action by the patrol.

(4) Oral proceedings must be recorded by the method chosen by the patrol and such recording will become part of the hearing record.

(5) The following process applies to administrative hearings under this chapter:

(a) The patrol will notify the assistant attorney general of the petitioner's request for an administrative hearing.

(b) The assistant attorney general will draft an administrative complaint and send it to the petitioner and to the office of administrative hearings.

(c) The office of administrative hearings will schedule a hearing date, and will notify the petitioner, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(d) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(e) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the patrol.

(f) At the hearing, the petitioner may be represented by an attorney or may choose to represent himself or herself. The petitioner or his/her attorney will be allowed to present witnesses and other evidence.

(g) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(6) Initial and final order. At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the petitioner and the assistant attorney general.

(a) Either the petitioner or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the patrol for review. Following this review, the patrol will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

#### **NEW SECTION**

**WAC 204-24-090 Appeal.** Any person aggrieved by the decision of the patrol suspending or revoking an approval may appeal such decision to the superior court under the provisions of chapter 34.05 RCW.

#### **WSR 12-17-153**

##### **PERMANENT RULES**

##### **WASHINGTON STATE PATROL**

[Filed August 22, 2012, 9:39 a.m., effective October 1, 2012]

Effective Date of Rule: October 1, 2012.

Purpose: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of SHB 2443. The changes include, but may not be limited to, estab-

lishing a fee process and providing other clean up to existing language in the chapter.

Citation of Existing Rules Affected by this Order: Amending WAC 204-50-030, 204-50-040, 204-50-042, 204-50-046, 204-50-050, 204-50-070, 204-50-080, 204-50-090, 204-50-100, 204-50-110, 204-50-120, and 204-50-130.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, and 46.04.215.

Adopted under notice filed as WSR 12-13-084 on June 19, 2012.

Changes Other than Editing from Proposed to Adopted Version: 1. Removing the additions to the definition of manufacturer under WAC 204-50-030(18).

2. Removing the term oversight from the definition of vendor under WAC 204-50-030(24).

3. Amends WAC 204-50-040 to reference RCW 43.43.395 (3)(b)(i) to coincide with the changes made in SHB 2443 which renumbered this section to be RCW 43.43.395 (3)(c)(i).

4. Adding in "A manufacturer may approve a vendor to submit an application for a fixed/mobile service center on a case-by-case basis" to WAC 204-50-042 (2)(a) and (4)(a).

5. Adding in "A manufacturer may approve a vendor to submit an application for an ignition interlock technician on a case-by-case basis" to WAC 204-50-046 (2)(a) and updating (3)(e) and (4)(f) to reflect that if a vendor submits the application with approval of the manufacturer that they will also receive notification of a denial of that application or renewal.

6. Adds vendor back into WAC 204-50-046 (5) and (6).

7. Adds manufacturer and vendor to WAC 204-50-100(2).

8. Clarifies that photos must be accessible at the service center from a secure storage location.

9. Changes the minimum time for a random breath test to be three minutes instead of four in WAC 204-50-110 (1)(d).

10. Adds clarification regarding which components must be uniquely serial numbered under WAC 204-50-110 (1)(g).

11. Adds "On or before June 10, 2015 back into the language under WAC 204-50-110 (1)(i).

12. Adds "When reasonably available" to WAC 204-50-110 (1)(n) and adds the following language outlining what reasonably available means:

The digital image identification device reference in WAC 204-50-110 [(1)(n)] and RCW 43.43.395 is considered reasonably available in the area of Washington state. The digital image identification device must be incorporated into:

a) Any new ignition interlock device installation and any user in violation of RCW 46.20.720(4) by January 1, 2013.

b) Any ignition interlock device issued to a user under a five or ten year restriction by June 10, 2013.

c) All ignition interlock devices by June 10, 2015.

13. Adds to WAC 204-50-120(1) that a vendor approved by the manufacturer may assist the manufacturer with requirements outlined in WAC 204-50-120 (1) and (3).

14. Adding in "A manufacturer may approve a vendor to determine a restricted operator's compliance of this section in accordance with RCW 46.20.720 on a case-by-case basis" to WAC 204-50-130(1).

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA

98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 12, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 12, Repealed 0.

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

Date Adopted: August 17, 2012.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-030 Definitions.** The following definitions will apply throughout this chapter:

(1) Alcohol - (~~Means~~) The unique chemical compound ethyl alcohol. For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.

(2) Bogus sample - Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with an ignition interlock device.

(3) Breath alcohol concentration BrAC - Is the amount of alcohol in a person's breath determined by chemical analysis, which shall be measured by grams of alcohol per 210 liters of breath.

(4) Certification - The testing and approval process required by RCW 46.04.215, 43.43.395 and chapter 204-50 WAC.

(5) Chief - The chief of the Washington state patrol or his or her designee.

(6) Circumvention - (~~Means~~) The attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to(~~;~~):

(a) The operation of a vehicle without a properly functioning ignition interlock device(~~;~~):

(b) The push start of a vehicle with the ignition interlock device(~~;~~):

(c) The disconnection of any part of the device including the control head while the vehicle is in operation or alteration of the ignition interlock device(~~;~~):

(d) The introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle(~~;~~):

(e) The introduction of an intentionally contaminated or altered breath sample(~~;~~):

(f) The intentional disruption or blocking of a digital image identification device;

(g) The continued operation of the interlock vehicle after the ignition interlock device detects excess breath alcohol.

(7) Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the ignition interlock device.

(8) DOL - The department of licensing of the state of Washington.

(9) Fail level - The BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below ~~(, or must shut off the vehicle, to avoid registering a violation reset)~~.

(10) Fee - Nonrefundable administrative fee set by schedule paid to the patrol by the manufacturer through electronic funds transfer.

(11) Ignition interlock device - An electronic device that is installed in a vehicle which requires submitting to a BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ignition interlock device detects a BrAC test result below the alcohol setpoint, the ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ignition interlock device detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

~~((11))~~ (12) Ignition interlock technician - A person employed by the ignition interlock device manufacturer or vendor and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

~~((12))~~ (13) Impaired driving section - The section of the Washington state patrol that has been designated by the chief of the Washington state patrol to coordinate and regulate ignition interlock devices.

~~((13))~~ (14) Initial start failure - A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

~~((14))~~ (15) Lessee - A person who has entered into an agreement with a manufacturer, vendor, or service center to lease an ignition interlock device.

~~((15))~~ (16) Letter of certification - ~~((Means))~~ A letter issued by the Washington state patrol that authorizes a manufacturer's ignition interlock device to be used as an ignition interlock device under this chapter; or an ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or a service center location to service, install, monitor, and calibrate ignition interlock devices currently certified for use in Washington state.

~~((16))~~ (17) Lockout - A period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

~~((17))~~ (18) Manufacturer - The person, company, or corporation who produces the ignition interlock device, and certifies to the impaired driving section that a service center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, instruct, and provide information on the manufacturer's ignition interlock device.

~~((18))~~ (19) OAC - Office of the administrator of the court.

~~((19))~~ (20) Patrol - The Washington state patrol as defined in RCW 43.43.010.

~~((20))~~ (21) Restricted operator - A person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with an approved, functioning ignition interlock device.

~~((21))~~ (22) Service center - A location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.

~~((22))~~ (23) Tampering - Any act or attempt to disable or circumvent the legal operation of an ignition interlock device.

~~((23))~~ (24) Vendor - An impaired driving section approved company, business, or distributor who is contracted by a manufacturer to manage service centers and/or technicians.

~~((24))~~ (25) Violation reset - An unscheduled service of the ignition interlock device ~~((and required))~~ which includes the following:

(a) Calibration as outlined in WAC 204-50-080 (3)(a);

(b) Visual inspection of wiring harness;

(c) Download of the ignition interlock device's data storage system ~~((by a service center because the restricted operator has recorded a fail level or a restricted operator failed to have the ignition interlock device serviced within the time period described in this chapter)).~~

~~((25))~~ (26) Wet bath simulator - A device which when filled with a certified alcohol and water simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-040 Ignition interlock device certification.** (1) An application must be approved and letter of certification issued by the chief or designee before a manufacturer's ignition interlock device is authorized for installation pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section for a letter of certification for its ignition interlock device and pay all applicable fees.

(b) In order to have an ignition interlock device certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section.

(ii) Provide written verification that the ignition interlock device complies with all applicable standards set under RCW 43.43.395 and chapter 204-50 WAC, including written

documentation from an International Organization for Standardization (ISO) certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (~~((3)(b)(i))~~) (3)(c)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) Provide two ignition interlock devices for field and laboratory testing (~~and review~~).

(iv) Attach to the application a declaration on the form provided by the impaired driving section that:

(A) The manufacturer, and its employees will cooperate with the impaired driving section at all times, including its inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of ignition interlock device.

(B) The manufacturer agrees to collect and pay all applicable fees, provide all downloaded ignition interlock device data, reports and information related to the ignition interlock device to the impaired driving section in an impaired driving section approved electronic format.

(C) The manufacturer, vendor, and/or ignition interlock technician agrees to provide testimony relating to any aspect of the installation, service, repair, calibration, use, removal or performance of the ignition interlock at no cost on behalf of the state of Washington or any other political subdivision.

(v) Provide the alcohol reference value and type of calibration device used to check the ignition interlock device.

(vi) Provide the Washington state software ignition interlock device configuration profile.

(vii) Provide the impaired driving section, a letter size map of the state of Washington showing the area covered by each certified fixed site and/or mobile service center, areas and the name, address, certification number and telephone number of each service center.

**(3) Issuance of a letter of certification for an ignition interlock device or renewal of letter of certification for an ignition interlock device.**

(a) The chief or designee will have the authority to issue a letter of certification for a device if all the requirements have been met by the applicant.

(b) Upon receipt of an application for letter of certification, the chief or designee will:

(i) Approve an application under this section if all requirements of this section have been met; or

(ii) Deny the application if all requirements of this chapter have not been met by the applicant. If an applicant is denied, the applicant must wait ninety days before the applicant may resubmit its application for letter of certification for an ignition interlock device.

(c) The chief or designee will notify the applicant in writing if an application for a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(d) A letter of certification for an ignition interlock device will be effective the date stated on the letter.

(e) A letter of certification for an ignition interlock device will be valid for three years or until it is surrendered, suspended, or revoked.

(f) A letter of certification for an ignition interlock device will be subject to annual review by the impaired driving section and at its discretion during the course of the certification period.

**(4) Renewal of a letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section requesting a renewal of a letter of certification for an ignition interlock device and pay all applicable fees. The renewal request may be submitted ninety days prior to the expiration of a letter of certification, but a renewal request must be submitted within thirty days prior to the expiration of a letter of certification.

(b) For a manufacturer to have its letter of certification for an ignition interlock device renewed, it must submit:

(i) A written request for renewal of a letter of certification for an ignition interlock device.

(ii) Written verification that the ignition interlock device complies with all applicable standards set in RCW 43.43.395 and chapter 204-50 WAC, including a current report from an ISO certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (~~((3)(b)(i))~~) (3)(c)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) The ignition interlock device for field testing to be completed by the impaired driving section.

(c) The chief or designee will notify the manufacturer in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certified holder via certified mail, return receipt requested.

**(5) Revocation of a letter of certification for an ignition interlock device.**

(a) The chief or designee may revoke a letter of certification for an ignition interlock device for a manufacturer's, vendor's, service center's or ignition interlock technician's violation of any of the laws or regulations related to the installation, servicing, monitoring, removal and calibration of ignition interlock devices, including but not limited to, "additional requirements" listed in WAC 204-50-120.

(b) A copy of a notice of revocation for a certification for an ignition interlock device will be provided to the DOL and to the OAC for the state of Washington.

(c) Upon revocation of a letter of certification for an ignition interlock device, the manufacturer's ignition interlock device(s) will be removed from the list of certified ignition interlock devices on the patrol's web site.



(d) If a manufacturer holding a letter of certification for an ignition interlock device is no longer in business, it shall immediately send written notification to the impaired driving section informing it that the manufacturer is no longer in business, and the impaired driving section will revoke its letter of certification.

(e) If a manufacturer holding a letter of certification wishes to voluntarily relinquish its letter of certification, the manufacturer shall send written notice to the impaired driving section advising it that the manufacturer is relinquishing its letter of certification for an ignition interlock device.

(f) Upon voluntary surrender or revocation of a letter of certification for a manufacturer's ignition interlock device, the impaired driving section shall notify all vendors and/or service centers that all of a manufacturer's uncertified ignition interlock devices must be removed and replaced by a certified ignition interlock device within sixty-five days of the effective date of such surrender or revocation. The service center will notify all affected lessees of the revocation of the manufacturer's certification and requirement that a certified service center install and/or replace the ignition interlock device.

(g) The impaired driving section will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the time period required by the patrol records retention schedule.

(h) The chief or designee will notify the manufacturer in writing if a letter of certification has been revoked. The notice of revocation will be sent to the certificate holder via certified mail, return receipt requested.

(6) All ignition interlock devices must employ fuel cell technology on or before June 10, 2015. An ignition interlock device that does not employ fuel cell technology after June 10, 2015, will not be an approved device in Washington state and will have its letter of certification denied or revoked.

**AMENDATORY SECTION** (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-042 Service center certification and inspection.** (1) An application must be approved, all applicable fees paid and a letter of certification issued by the chief or designee before a fixed or mobile service center may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

**(2) Application for certification for a fixed site service center.**

(a) A manufacturer (~~(or vendor)~~) must submit an application to the impaired driving section for a letter of certification for a fixed service center. A manufacturer may approve a vendor to submit an application for a fixed service center on a case-by-case basis.

(b) In order to have a fixed service center certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section. In the application form the applicant shall disclose:

(A) The physical address of the service center;

(B) The days and hours of operation for the service center;

(C) The type of the certified ignition interlock device it will service;

(D) The type of calibration device it will use for the ignition interlock device(s) it will service.

(ii) Submit a copy of the ignition interlock device data reader download procedures.

(iii) Submit a written statement from a manufacturer that authorizes the service center to install the manufacturer's certified ignition interlock device.

(iv) Submit a list of all fees that may be charged to the lessee to install the manufacturer's certified ignition interlock device.

**(3) Renewal of certification for a fixed site service center.** The impaired driving section will conduct an annual inspection of all certified fixed site service centers. Upon successful completion of the inspection and payment of all applicable fees the certification will be renewed.

**(4) Application for certification for a mobile site service center.**

(a) A manufacturer (~~(or vendor)~~) must submit an application to the impaired driving section for a letter of certification for a mobile service center. A manufacturer may approve a vendor to submit an application for a mobile service center on a case-by-case basis.

(b) In order to have a mobile service center certified, the applicant(s) must:

(i) Submit the information required in subsection (1)(b)(i) through (iii) of this section.

(ii) Submit a copy of liability insurance for ~~((the))~~ all vehicles to be used as ~~((the))~~ a mobile service center.

(iii) Submit certification number(s) of the fixed site service center(s) overseeing the mobile service center and the technician(s) that will work from the mobile service center(s).

(iv) Submit a list of all fees or rates that may be charged to a lessee to install, remove, repair, or service an ignition interlock device by a mobile service center.

~~((4))~~ **(5) Inspection of fixed and/or mobile service center.** A vendor or manufacturer must agree to allow access for a representative from the impaired driving section to conduct an inspection at any time during scheduled business hours to ensure compliance as required in chapter 204-50 WAC.

~~((5))~~ **(6) Service center requirements.** To receive and maintain a letter of certification, a fixed site service center must:

(a) Be located in a facility which properly accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and/or removing of ignition interlock devices.

(b) Have posted a current copy of all fees and rates a lessee may be charged to install, remove, repair or service an ignition interlock device by a fixed or mobile service center. The fees and rates must be plainly visible and capable of being read at all times by the public.

(c) Provide lessees a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge.

(d) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(e) Comply with all municipal and/or county zoning regulations for commercial businesses and provide a corresponding business license.

(f) Have and maintain a designated waiting area that is separate from the installation area for the lessee. The designated waiting area must be shielded from the installation area so a lessee or any other unauthorized person cannot witness the installation or service of the ignition interlock device.

(g) Have an area and the electronic equipment available for restricted drivers to view training videos provided by the impaired driving section or manufacturer.

~~((6))~~ **(7) Issuance of letter of certification for a fixed and/or mobile service center.**

(a) The chief or designee will have the authority to issue a letter of certification to a fixed and/or mobile service center if all qualifications outlined in this chapter have been met by the applicant.

(b) A letter of certification or a service center must be posted and visible to the public.

(c) The chief or designee will notify ~~((an applicant))~~ the manufacturer in writing if a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-046 Ignition interlock technician certification.** (1) **The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician.** An application must be approved and letter of certification issued by the impaired driving section before an ignition interlock technician may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock technician.**

(a) A manufacturer(~~, vendor, or service center~~) must submit an application to the impaired driving section for a letter of certification for each ignition interlock technician employed at a fixed or mobile service center and pay all applicable fees to the state of Washington. A manufacturer may approve a vendor to submit an application for an ignition interlock technician on a case-by-case basis.

(b) In order to receive a letter of certification for an ignition interlock technician, the applicant~~((s))~~ shall:

(i) Complete the application form provided by the impaired driving section.

(ii) ~~((Beginning January 1, 2012, or prior to the next renewal))~~ Have its employee complete the knowledge and skills examination administered by the impaired driving section. An applicant's employee must score eighty percent or higher on the knowledge and skills examination to be eligible for a letter of certification.

(iii) Submit, at the expense of the manufacturer, service center, vendor or applicant, a criminal history report con-

ducted within the preceding thirty days of the date on the application. The criminal history report shall be attained from either the patrol's identification and criminal history section if the employee has lived in Washington for five years immediately preceding the date of the application or, a criminal background check from the agency responsible for keeping criminal history in the state or states of the previous residence of an employee who has not lived in Washington for the five years immediately preceding the date of application.

(c) The chief or designee will refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician:

(i) Has been convicted of:

(A) Any alcohol related traffic offense within the last three years;

(B) A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years;

(C) Any offense classified as a class B or C felony within the five years prior to the date of the applicant filing an application for certification as an ignition interlock technician~~((-))~~;

~~((+))~~ (D) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction; or

(E) Any gross misdemeanor within the last three years.

(ii) The chief or designee may refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician has been convicted of:

(A) Any misdemeanor within the last year; or

(B) Has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules or court orders, whether at the local, state or federal level;

(iii) Fails to demonstrate character and general fitness sufficient to command the confidence of the impaired driving section and warrant a belief that the duties of a technician will be conducted honestly, fairly and efficiently in the conduct of ignition interlock service. In determining character and general fitness, the impaired driving section may consider:

(A) Prior contacts with law enforcement;

(B) Criminal record;

(C) Reputation in the community;

(D) Associations; and

(E) Current driver's license status and abstract driving record.

(iv) Has been granted a deferred prosecution under chapter 10.05 RCW for an alcohol related traffic offense within the last three years.

~~((+))~~ (v) Is not at least eighteen years of age.

~~((+))~~ (vi) Does not possess a valid Washington driver's license if:

(A) The ignition interlock technician is employed by a service center that provides a mobile service center; or

(B) The ignition interlock technician must operate a lessee's vehicle to provide services in accordance with this chapter.

(d) The term "conviction" as used in this section will have the same meaning as used in chapter 9.94A RCW.

**(3) Issuance of letter of certification for an ignition interlock technician.**

(a) The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician if an application has been approved and all qualifications set out in this chapter have been met by the applicant.

(b) A letter of certification for an ignition interlock technician will be effective the date stated in the letter and contain a certification number specific to the ignition interlock technician.

(c) A letter of certification for an ignition interlock technician will be valid for one year or until suspended, superseded, or revoked by the impaired driving section.

(d) A letter of certification for an ignition interlock technician will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(e) The chief or designee will deny an application for a letter of certification for an ignition interlock technician if all qualifications are not met by the applicant, and it will notify the ~~((applicant and service provider or vendor or both))~~ manufacturer and vendor, if submitted for approval by the vendor with approval of the manufacturer, within ten days of such determination.

(f) The chief or designee will notify the ~~((applicant))~~ manufacturer in writing if an application for letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

**(4) Renewal of a letter of certification for an ignition interlock technician.**

(a) A letter of certification for an ignition interlock technician certification must be renewed and all applicable fees paid on an annual basis.

(b) An application to renew a letter of certification for an ignition interlock technician must be submitted to the impaired driving section at least thirty days prior to the expiration of the certification.

(c) An incomplete or untimely application may result in the expiration of a letter of certification for an ignition interlock technician. If a letter of certification for an ignition interlock technician expires, the ignition interlock technician identified in the expired letter of certification shall immediately stop working as an ignition interlock technician until a new letter of certification is issued by the chief or designee.

(d) Renewal of a letter of certification for an ignition interlock technician will be the same as the process outlined in this section, except the submission of a criminal history report may be submitted by the ignition interlock technician.

(e) If there is pending action against an ignition interlock technician for any violation of the rules outlined in this chapter, an application for the renewal of a letter of certification will not be processed until the pending action has reached a final resolution.

(f) The chief or designee will notify the ~~((service center))~~ manufacturer and vendor, if submitted for approval by the vendor with approval of the manufacturer, in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certificate holder via certified mail, return receipt requested.

**(5) Surrender of a letter of certification for an ignition interlock technician.**

(a) An ignition interlock technician letter of certification may be surrendered upon written request from the vendor, ~~((service center))~~ manufacturer, or an ignition interlock technician or if the impaired driving section receives written notification that the ignition interlock technician is no longer ~~((employed))~~ certified by ~~((a certified service center representing))~~ the same manufacturer under which the current ignition interlock technician certification was issued.

(b) The original letter of certification must be returned to the impaired driving section. If the original certification is not provided with the written notification the impaired driving section will instruct an inspector to obtain the original certification.

**(6) Suspension or revocation of a letter of certification for an ignition interlock technician.**

(a) The chief or designee may suspend or revoke certification of an ignition interlock technician who no longer meets all of the requirements outlined under the Revised Code of Washington or this chapter.

(b) The chief or designee will notify the ignition interlock technician, manufacturer and vendor in writing if a letter of certification has been suspended or revoked. The notice of suspension or revocation will be sent to the certificate holder via certified mail, return receipt requested.

(c) During a period of suspension of a letter of certification for an ignition interlock technician, the suspended ignition interlock technician shall cease any and all activities related to the repair, installation, removal, or service of a certified ignition interlock device in the state of Washington.

(d) If a letter of certification for an ignition interlock technician is suspended or revoked the ignition interlock technician shall, on demand, surrender the certification and return it to the impaired driving section.

**AMENDATORY SECTION** (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-050 Modifications to a certified ignition interlock device.** (1) A manufacturer ~~((, vendor or service center))~~ shall immediately notify the impaired driving section, in writing, of any material modification. A material modification is any ~~((additional))~~ addition or reduction in features, software version changes, configuration profile changes or alteration in the components and/or the design of the certified ignition interlock device. Written notification of a material modification may be submitted to the impaired driving section in an electronic format approved by the impaired driving section.

(2) A manufacturer must resubmit evidence of compliance as required in WAC 204-50-040 to the impaired driving section within thirty days of notifying the impaired driving section of a material modification.

(3) The impaired driving section will determine if the device must be submitted for recertification.

**AMENDATORY SECTION** (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-070 Variable calibration of an ignition interlock device.** To be certified, an ignition interlock device must be capable of being preset, by only the manufacturer ~~((,~~

vendor, service center or by an ignition interlock technician), at any fail level from .02 through .09 g/210L BrAC (plus or minus .005 g/210L BrAC). The actual setting of each ignition interlock device, unless otherwise mandated by the originating court, must be .025 g/210L BrAC. The capability to change this setting must be made secure, by the manufacturer (~~(, vendor, service center or by an ignition interlock technician)~~).

**AMENDATORY SECTION** (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-080 Certified ignition interlock device maintenance, calibration and reports.** (1) Each restricted operator shall have the ignition interlock device installed in the restricted operator's vehicle(s) examined by the manufacturer, vendor, service center or ignition interlock technician for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

(2) The restricted driver must pay a calibration fee at least once every sixty days.

(3) An ignition interlock device must be calibrated for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L.

(a) The calibration process will consist of the following procedures:

(i) Prior to introducing a reference sample into a device, a three second purge must be expelled from the wet bath simulator or dry gas standard.

(ii) An "as found" check to introduce the sample into the device without adjustment for accuracy. The test must be conducted prior to any adjustment for accuracy and the results must be recorded on the data logger.

(iii) The ~~(result must be)~~ accuracy check will consist of two consecutive reference checks with the result of each individual check being within plus or minus ten percent of the reference value introduced into the ignition interlock device. ~~((a))~~ The time period from the first accuracy check to the second consecutive accuracy check must not exceed five minutes.

(iv) Any ignition interlock device not passing calibration must be removed from service and the serial number of the device kept on record for three years. An ignition interlock device removed from service for not passing calibration may be placed back in service only if it is repaired to meet the standards as outlined in this chapter and all repairs are documented and kept in the record for three years.

(b) Wet bath simulators must:

(i) Use a mercury in glass or digital thermometer. These thermometers must read 34 plus or minus .2 degrees Centigrade during analysis and be certified annually using a National Institute of Standards and Technology (NIST) traceable digital reference thermometer.

(ii) Be found on the current National Highway Traffic Safety Administration confirming products list of calibrating units for breath alcohol testers.

(iii) Use alcohol reference solutions prepared and tested in a laboratory such that their reference value is shown to be

traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution must be tamper proof and labeled with the following: Lot or batch number, value of the reference sample in g/210L, and date of preparation and/or the expiration which must not be longer than one year from the date of preparation.

~~((b))~~ (c) Dry gas alcohol standards must be certified to a known reference value and traceable to National Institute of Standards and Technology - NIST Traceable Reference Material (NIST-NTRM) ethanol standards. The reference value will be adjusted for pressure changes due to elevation to which the dry gas is being used.

(i) Dry gas alcohol standard tanks must:

(A) Be stored in an environment where the temperature range remains between 50-104 degrees Fahrenheit.

(B) Have a label which will contain the following: Components and concentration of the reference value of the gas, expiration date which must not be longer than three years from the date of preparation, and the lot or batch number.

(ii) Each service center using a dry gas alcohol standard will have:

(A) An elevation chart which will be used to determine the proper reference value for the elevation for which the gas standard is being used.

(B) The certificate of analysis from the dry gas standard manufacturer.

~~((3))~~ (4) The results of any circumvention or bypass attempt and each calibration including the reference value, "as found" check, calibration check(s), and any adjustments made for accuracy and/or elevation pressure must be recorded on the ignition interlock device data logger and/or data base.

~~((4))~~ (5) Data contained in an ignition interlock device's memory or data logger must be downloaded and the manufacturer, vendor and/or service center must make an electronic copy of the client data and the results of each examination.

~~((5))~~ (6) Data downloaded by a manufacturer, vendor and/or service center from an ignition interlock device must be:

(a) Reviewed by the manufacturer, vendor, ignition interlock technician, and/or service center. Any evidence of noncompliance, violations, or signs of tampering and/or circumvention must be reported as requested by, and in a format acceptable to the originating court, impaired driving section and/or DOL.

(b) All information obtained as a result of each calibration or inspection must be retained by the manufacturer, vendor or service center for three years from the date the ignition interlock device is removed from the vehicle.

~~((6) The mail-in calibration and examination program will cease on January 1, 2012. Any service center proposing to offer a mail-in calibration and examination program to their lessees must obtain written approval from the impaired driving section prior to implementing the mail-in program.~~

~~(a) To obtain approval for a mail-in calibration and examination program, a service center must submit a copy of written procedures outlining how the mail-in program will comply with the requirements of this chapter.~~

~~(b) Written procedures for a mail-in calibration and examination program must include:~~

~~(i) A requirement that all restricted operators enrolled in the mail-in program have the ignition interlock device calibrated, downloaded, the ignition interlock device's wiring harness physically inspected in the vehicle in which it was installed at a fixed site or mobile service center of the manufacturer every one hundred thirty days for the period of installation.~~

~~(ii) A restriction prohibiting restricted operators from using the program during the last four months of a restricted operator's DOL or court mandated ignition interlock device period.~~

~~(iii) A disqualification for a restricted operator from the mail-in program if their data reader or data base shows a breath alcohol sample equal to or greater than .040 g/210L, or if a restricted operator and/or lessee has a violation reset condition.~~

~~(c) The manufacturer, vendor, ignition interlock technician or service center must provide a restricted operator with written instructions on how to utilize the mail-in program.~~

~~(d) A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.)~~

(7) The manufacturer, vendor and/or service center must provide, upon request, additional reports in a format acceptable to and at no cost to DOL, impaired driving section and/or the originating court.

(8) A service center must maintain records documenting all calibrations, downloads and any other services performed on an ignition interlock device, including service of a violation reset. Charges for installations, calibrations, downloads and service must be made using a numbered billing invoice. The billing invoice must contain the date of service and all fees for service must be itemized.

(9) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained on site for a minimum of three years.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-090 Ignition interlock device security.**

(1) A manufacturer and its vendors, service center(s), and ignition interlock technicians must take all ~~((reasonable))~~ steps necessary to prevent tampering or physical circumvention of an ignition interlock device. These steps must include:

(a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Breath anticircumvention features such as alternating breath flow, hum tone, breath temperature and any other impaired driving section approved anticircumvention features must be activated during all start up and random breath tests;

(d) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer ~~((and/or vendor))~~.

(2) In addition, a service center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert manufacturer, vendor or service center's toll free number)."

(3) No owner or employee of a manufacturer, vendor or service center may authorize or assist with the disconnection of an ignition interlock device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock device, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's, vendor's, service center, and/or ignition interlock technician's certification under chapter 204-50 WAC.

(4) The sale or use of any type of remote code allowing a restricted driver to bypass a lockout condition or any user to not provide a breath sample on vehicle start up is prohibited.

(5) All known ignition interlock device circumventions or tampering must be reported to the impaired driving section in an impaired driving section approved electronic format within seven days of determining that an ignition interlock device was circumvented or tampered with.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-100 Installation of ignition interlock devices.** (1) An ignition interlock device can only be installed by a certified ignition interlock technician.

(2) The installation verification fee will be collected from the lessee by the manufacturer, vendor, service center, or ignition interlock technician at the time of installation and recorded in a log.

(3) An ignition interlock technician shall not install an ignition interlock device on a vehicle unless the restricted operator is:

(a) Successful in completing all training provided by the impaired driving section and/or manufacturer prior to initially using the ignition interlock device;

(b) The registered owner of the vehicle or has a signed ~~((letter of authorization from the registered owner))~~ "Non-owned Installation Approval Form" approving the ignition interlock device installation; and

(c) Provided ignition interlock device training by the manufacturer, vendor, service center, and/or certified technician. If the impaired driving section and/or DOL provides educational materials to the manufacturer, vendor, service center and/or technician, those training materials will be provided to and completed by the restricted operator and/or lessee in addition to the training required under this section.

~~((3))~~ (4) An ignition interlock technician shall:

(a) Record the following information before installing an ignition interlock device:

(i) The full name, current address, phone number, driver's license number of the lessee and/or restricted operator.

(ii) The vehicle license registration number for the vehicle in which the ignition interlock device is to be installed.

(iii) The unique serial number of the ignition interlock device installed and corresponding vehicle license registration number of the single vehicle in which it was installed.

(b) Ensure that no restricted operator, lessee or other unauthorized person witnesses the installation, service or removal of an ignition interlock device.

(c) Inspect all vehicles prior to installation of an ignition interlock device to determine if parts of a vehicle affected by an ignition interlock device are in acceptable condition and an ignition interlock device shall not be installed until the vehicle is in acceptable condition.

(d) Follow the manufacturer's instructions and regulations outlined in this chapter for the installation, servicing and removal of ignition interlock devices.

(e) Install the following physical anti-tampering measures:

(i) Place all connections and associated wiring between an ignition interlock device and a vehicle in an area of the vehicle not immediately accessible or visible to the lessee or restricted operator.

(ii) Cover with a unique and easily identifiable seal, epoxy, resin, shrink wrap, sheathing, or tamper proof tape:

(A) Any portion of an ignition interlock device that can be disconnected;

(B) Any wires used to install the ignition interlock device that are not inside a secured enclosure; and

(C) Mark points likely to be accessed when attempting to tamper with the ignition interlock device with other material unless the ignition interlock device is capable of recording such attempts to tamper with it.

~~((4))~~ (5) A service center or ignition interlock technician will:

(a) Thoroughly train a restricted operator on the proper use and functionality of an ignition interlock device; ~~(and)~~

(b) Provide a user reference, operation, and problem-solving guide in English or Spanish to the restricted operator when an ignition interlock device is installed; and

(c) Upon installation of the ignition interlock device, take a digital reference image or photograph of the restricted driver which must be accessible at the service center from a secure storage location for the duration of the installation.

~~((5))~~ (6) A service center or ignition interlock technician will be available during all posted hours of operation to answer all questions and handle any problems related to a restricted operator's ignition interlock device, including repair or replacement of an inoperable or malfunctioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-110 Mandatory requirements for an ignition interlock device.** (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(d) Allow a minimum of three minutes and a maximum of six minutes for random breath tests to be initiated prior to an indication of a missed test and a violation reset. The device must be capable of notifying the restricted driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation and/or countdown timer.

(e) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

~~((e))~~ (f) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an ignition interlock device, and an additional mouth piece with every sixty to sixty-five day calibration period.

~~((f))~~ (g) Have all primary components as identified by the impaired driving section uniquely serial numbered, which includes, but may not be limited to, the storage device, handset, and camera.

~~((g))~~ (h) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

~~((h))~~ (i) On or before June 10, 2015, require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and thirty minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

~~((i))~~ (j) Require the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A ~~((rolling))~~ random retest must continue at ~~((randomly))~~ variable intervals ranging from ten to forty-five minutes after the previous retest for the duration of the travel. If a bypass is recorded at start up, the random breath testing procedure will continue for the duration of travel.

~~((j))~~ (k) Be equipped with a method of immediately notifying law enforcement officers if a violation reset occurs from a ~~((rolling))~~ random retest or the result of the retest exceeds the lower of .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court or any disconnection of the ignition interlock device control head for longer than one minute after vehicle start up. Acceptable forms of notification are repeated honking of the vehicle's horn (~~(repeated flashing of the vehicle's headlights,))~~ or the use of an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court.

~~((4))~~ (1) Enter into violation reset when the restricted operator has:

(i) Recorded a random test failure;

(ii) Disconnected the control head after start up;

(iii) Failed to submit to a random retest;

(iv) Failed to have the ignition interlock device serviced within the time period described in this chapter.

(m) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days of when the violation reset occurred.

(n) When reasonably available, contain a digital image identification device as prescribed in RCW 43.43.395. The digital image device will not distract or impede the driver in any manner from safe and legal operation of the vehicle and will:

(i) Encode a digital or photographic image of the vehicle driver including the time, date and BrAC level of all breath attempts. All images and data for a sixty-five day use period must be stored in the device's memory to be downloaded and stored by the manufacturer for three years.

(ii) Capture a digital image or photograph of the driver:

(A) Within five seconds after starting the vehicle.

(B) Upon initial notification that a random retest is required.

(C) When a violation reset condition is initiated.

(D) Randomly at the discretion of the manufacturer.

(iii) Produce a digital image, identifiable verification or a photograph of the restricted driver in all lighting conditions: extreme brightness, darkness and low light conditions.

(2) The digital image identification device reference in subsection (1)(n) of this section and RCW 43.43.395 is considered reasonably available in the area of Washington state. The digital image identification device must be incorporated into:

(a) Any new ignition interlock device installation and any user in violation of RCW 46.20.720(4) by January 1, 2013.

(b) Any ignition interlock device issued to a user under a five or ten year restriction by June 10, 2013.

(c) All ignition interlock devices by June 10, 2015.

(3) The manufacturer, vendor, ignition interlock technician or service center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court. The manufacturer, vendor or service center must provide notification to DOL and impaired driving section in an acceptable electronic format should DOL or impaired driving section promulgate rules requiring such notification of a violation reset condition.

~~((3))~~ (4) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-120 Additional requirements.** (1) Notwithstanding other provisions of this chapter, each manufacturer of a certified ignition interlock device, either on its own or through a vendor (~~(or service center)~~) approved to do so by the manufacturer shall:

(a) Guarantee repair or replacement of a defective ignition interlock device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint or known failure of an ignition interlock device.

(b) Demonstrate to the satisfaction of impaired driving section, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's ignition interlock device within a seventy-five mile radius of his or her place of residence.

(c) Receive written approval from impaired driving section and require mobile service ignition interlock technicians to sign an agreement to abide by all aspects of WAC 204-50-080 before mobile service centers may work outside of the umbrella of their overseeing fixed site service center(s) to provide service in rural counties of the state. Qualifying rural counties under the Washington state department of health guidelines include: Jefferson, Pacific, Wahkiakum, Klickitat, San Juan, Columbia, Garfield, Adams, Lincoln, Pend Oreille, Stevens, Ferry, and Okanogan counties.

(d) Provide written notification of any changes to a manufacturer's service center network to the impaired driving section within seven days of such change.

(e) Maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees and/or restricted operators to call if they have problems with the ignition interlock device they have leased from the manufacturer, vendor or service center. Calls must either be answered by an ignition interlock technician qualified to service the manufacturer's ignition interlock devices, or the call must be returned by a qualified technician within thirty minutes of the original call.

(2) The manufacturer shall provide to the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered must include, but not limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify the impaired driving section not less than thirty days before the expiration or termination of such cov-

erage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection (3) of this section.

(3) A ~~((vendor or service center))~~ manufacturer or vendor approved by the manufacturer shall provide the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that each and every service center has:

(a) Garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered must include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the service center.

(b) Operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered must include, but not be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring.

(c) Insurance provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify the impaired driving section not less than thirty days before expiration or termination of such coverage.

(d) Insurance coverage required in this subsection must be in addition to and not considered a replacement for other coverage required in this section.

(4) A vendor or service center shall notify the DOL in an acceptable format and if so requested by the originating court, notify the originating court, if any, of the removal of an ignition interlock device under any circumstances other than:

(a) Immediate ignition interlock device repair needs.

(b) Removal of the ignition interlock device in order to switch it to a replacement vehicle to be operated by the restricted operator. Report of such a vehicle switch including the license of the vehicle must be transmitted to the DOL, and the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the ignition interlock device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. **NOTE:** Whenever an ignition interlock device is removed for repair, and cannot be immediately reinstalled, a substitute ignition interlock device must be utilized. Under no circumstances will a manufacturer, service center or ignition interlock technician knowingly permit a restricted operator to drive a vehicle not equipped with a functioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

**WAC 204-50-130 Requirements for removing an ignition interlock device.** (1) A ~~((vendor))~~ manufacturer will determine a restricted operator's compliance of this section in accordance with RCW 46.20.720. A manufacturer may approve a vendor to determine a restricted operator's compliance of this section in accordance with RCW 46.20.720 on a case-by-case basis.

(2) The manufacturer or its service center must return the vehicle in normal operating condition after it removes an ignition interlock device.

(3) An ignition interlock technician or service center can only remove an ignition interlock device for which they have been certified to service, unless an ignition interlock technician or service center has received approval from the impaired driving section allowing it to remove an ignition interlock device that it has not been certified to service.

(4) An ignition interlock device will be removed from the vehicle in which it is installed when a restricted driver or lessee becomes sixty days past due on their account. If the restricted driver does not appear for a removal appointment and makes no attempt to contact the manufacturer, the replacement cost of the ignition interlock device may be added to the lessee's account.

(5) A manufacturer or its service center shall provide any final report requested by the originating court, impaired driving section and/or requested by DOL to the requestor once the ignition interlock device has been removed from a restricted operator's vehicle(s).

#### NEW SECTION

**WAC 204-50-135 Fees.** (1) The impaired driving section will maintain a fee schedule in accordance with section 15, chapter 183, Laws of 2012. Fees outlined in this fee schedule will be:

(a) Collected and recorded by vendors, service centers, ignition interlock technicians and manufacturers.

(b) Submitted to the manufacturer within fifteen days of the end of the calendar month in which they were collected along with the record on a form provided by the patrol, if they are collected by vendors, service centers or ignition interlock technicians.

(c) Submitted electronically by the manufacturer to the patrol within thirty days of the end of the calendar month in which they were collected along with the record on a form provided by the patrol.

(2) Annual fees will be added to the record for the month in which the certification or renewal is due and paid to the patrol as outlined in subsection (1) of this section.

(3) The record provided to the manufacturer will include the type of fee collected, name or driver's license number of customer (if applicable), total amount paid, name and certification number of vendor, service center or ignition interlock technician who collected payment.

(4) The patrol may review financial records to ensure compliance with this chapter and may revoke or suspend a certification for nonpayment of fees and/or any financial discrepancies found.