

WSR 09-16-006
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed July 22, 2009, 3:25 p.m., effective August 22, 2009]

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

Purpose: The rule-making order amends chapters 16-301 and 16-302 WAC by modifying the scientific names of noxious weed seeds in order to update and reconcile the names with current nomenclature as listed in the USDA germplasm resource information network (GRIN). This will reduce confusion as to which seeds are considered noxious and will help to ensure that weed seeds are categorized correctly for seed shipments into Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-045, 16-301-050, 16-302-100, and 16-302-105.

Statutory Authority for Adoption: Chapter 15.49 RCW.

Adopted under notice filed as WSR 09-11-125 on May 20, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 22, 2009.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-301-045 Prohibited noxious weed seeds. Prohibited noxious weed seeds are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. Seed is deemed mislabeled if the seed consists of or contains any of the prohibited noxious weed seeds listed below. For the purpose of seed certification, see WAC 16-302-100 for the list of prohibited noxious weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	<i>Rorippa austriaca</i> (Crantz) Bess.
Field bindweed	<i>Convolvulus arvensis</i> L.
Hedge bindweed	<i>Convolvulus sepium</i> L.
Bladder campion	<i>Silene</i> ((eubatus)) <u>ul-</u> <u>garis</u>

**ENGLISH OR
COMMON NAME**

**BOTANICAL OR
SCIENTIFIC NAME**

(only in timothy-
Phleum pratense)

Camelthorn

Alhagi ((~~camelorum~~ Fisch.))
maurorum

Canada thistle

Cirsium arvense (L.) Scop.

Hairy whitetop

((~~Cardaria pubescens~~ (C.A.
Mey.))) Lepidium appe-
lianum

Hoary cress

((~~Cardaria~~)) Lepidium
draba ((~~L.~~) Desv.)

Jointed goatgrass

Aegilops cylindrica

(only in small grain)

Knapweed complex

(including bighead,

Centaurea macrocephala,

Vochin,

Centaurea nigrescens,

black,

Centaurea nigra,

brown,

Centaurea jacea,

diffuse,

Centaurea diffusa,

meadow,

Centaurea jacea x nigra,

Russian,

((~~Centaurea~~)) Rhaponticum
repens,

spotted knapweeds

Centaurea ((~~maculosa~~))
stoebe,

Purple starthistle)

Centaurea calcitrapa

Leafy spurge

Euphorbia esula L.

Lepyrodictis

Lepyrodictis holosteoides

Perennial pepperweed

Lepidium latifolium L.

Perennial sowthistle

Sonchus arvensis L.

Quackgrass

((~~Elytrigia~~)) Elymus repens

Serrated tussock

Nassella trichotoma

Silverleaf nightshade

Solanum elaeagnifolium

Sorghum perennial such as,
but

Sorghum spp.

not limited to,
johnsongrass,
sorghum alnum, and
perennial sweet
sudangrass

Tansy ragwort

((~~Senecio jacobaea~~ L.))
Jacobaea vulgaris

Velvetleaf

Abutilon theophrasti

White cockle

Silene latifolia

(only in timothy-
Phleum pratense)

Yellow-flowering skeleton
weed

Chondrilla juncea L.

Yellow starthistle

Centaurea solstitialis L.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-050 Restricted noxious weed seeds.

Restricted (secondary) noxious weed seeds are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. Seed is deemed mislabeled if it consists of or contains any of the restricted noxious weed seeds listed below in excess of the number declared on the label. For the purpose of seed certification, see WAC 16-302-105 for the list of objectionable weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass <u>or slender foxtail</u>	<i>Alopecurus myosuroides</i>
Black mustard	<i>Brassica nigra</i>
Blue lettuce	<i>Lactuca tatarica</i> subsp. <i>pulchella</i>
Docks and Sorrel	<i>Rumex</i> spp.
Dodder	<i>Cuscuta</i> spp.
Dyers woad	<i>Isatis tinctoria</i>
Field pennycress	<i>Thlaspi arvense</i>
(fanweed)	
Field sandbur	<i>Cenchrus incertus</i>
Gromwell (only in small grain)	<i>Buglossoides arvensis</i>
Halogeton <u>or clustered barilla salt</u>	<i>Halogeton glomeratus</i> C.A. Mey.
Medusahead	<i>Taeniatherum caput-medusae</i>
Plantains	<i>Plantago</i> spp.
Poverty weed	<i>Iva axillaris</i> Pursh.
Puncturevine	<i>Tribulus terrestris</i> L.
St. Johnswort	<i>Hypericum perforatum</i> L.
Dalmation toadflax	<i>Linaria dalmatica</i> (L.) Mill.
Yellow toadflax	<i>Linaria vulgaris</i> Hill.
Western ragweed	<i>Ambrosia psilostachya</i> DC.
Wild mustard	<i>Sinapis arvensis</i> subsp. <i>arvensis</i>
Wild oat	<i>Avena fatua</i> L.
Wild radish	<i>Raphanus raphanistrum</i>

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-100 Seed certification—Prohibited noxious weed seed. The following are considered prohibited noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	<i>Rorippa austriaca</i> (Crantz) Bess.
Field bindweed	<i>Convolvulus arvensis</i> L.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Hedge bindweed	<i>Calystegia</i> Spp.
Camelthorn	<i>Alhagi maurorum</i>
Canada thistle	<i>Cirsium arvense</i> (L.) Scop.
Dodder	<i>Cuscuta</i> spp.
Hairy whitetop	((<i>Cardaria pubescens</i> (C.A. Mey.))) <i>Lepidium appelianum</i>
Hoary cress	((<i>Cardaria</i>)) <i>Lepidium draba</i> (L.) Desv.
Jointed goatgrass	<i>Aegilops cylindrica</i>
Leafy spurge	<i>Euphorbia esula</i> L.
Perennial pepperweed	<i>Lepidium latifolium</i> L.
Perennial sowthistle	<i>Sonchus arvensis</i> L.
Quackgrass	((<i>Elytrigia</i>)) <i>Elymus repens</i> ((<i>(L.) Beauv.</i>))
Knapweed complex	
Bighead	<i>Centaurea macrocephala</i>
Vochin	<i>Centaurea nigrescens</i>
Black	<i>Centaurea nigra</i>
Brown	<i>Centaurea jacea</i>
Diffuse	<i>Centaurea diffusa</i>
Meadow	<i>Centaurea jacea</i> x <i>nigra</i>
Russian	((<i>Acroptilon</i>)) <i>Rhaponticum repens</i> ((L.))
Spotted	<i>Centaurea</i> ((<i>maculosa</i>)) <i>stoebe</i>
Purple starthistle	<i>Centaurea calcitrapa</i>
Yellow starthistle	<i>Centaurea solstitialis</i> L.
Serrated tussock	<i>Nassella trichotoma</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i> Cav.
Sorghum perennial such as, but not limited to, johnson-grass, sorghum almum, and perennial sweet sudangrass	<i>Sorghum</i> spp.
Tansy ragwort	((<i>Senecio jacobaea</i> L.)) <i>Jacobaea vulgaris</i>
Yellow-flowering skeleton weed	<i>Chondrilla juncea</i> L.
White cockle	<i>Silene latifolia</i> (only in timothy)
Bladder campion	<i>Silene vulgaris</i> (only in timothy)
Lepyrodielis	<i>Lepyrodielis holsteoides</i>
Velvetleaf	<i>Abutilon theophrasti</i>

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-302-105 Seed certification—Objectionable weeds. The following weeds are considered objectionable noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass or Slender fox-tail	<i>Alopecurus myosuroides</i>
Blue lettuce	<i>Lactuca tatarica</i>
Docks and Sorrel	<i>Rumex spp.</i>
Field pennycress (fanweed)	<i>Thlaspi arvense</i>
Field sandbur	<i>Cenchrus incertus</i>
Halogeton or Clustered barilla salt	<i>Halogeton glomeratus C.A. Mey.</i>
Medusahead	<i>Taeniatherum caput-medusae subsp. caputmedusae</i>
Plantains	<i>Plantago spp.</i>
Poverty weed	<i>Iva axillaris Pursh.</i>
Puncturevine	<i>Tribulus terrestris L.</i>
St. Johnswort	<i>Hypericum perforatum L.</i>
Dalmation toadflax	<i>Linaria dalmatica (L.) Mill.</i>
Yellow toadflax	<i>Linaria vulgaris Hill.</i>
Western ragweed	<i>Ambrosia psilostachya DC.</i>
Wild mustard	<i>Sinapis arvensis subsp. arvensis</i>
Wild oat	<i>Avena fatua L.</i>
Gromwell (in small grain)	<i>Buglossoides arvensis</i>
Bedstraw	<i>Galium spp. (in alfalfa only)</i>
Black mustard	<i>Brassica nigra</i>
Brown mustard	<i>Brassica juncea (in rape-seed only)</i>
Wild radish	<i>Raphanus raphanistrum</i>
Dyers woad	<i>Isatis tinctoria</i>

WSR 09-16-010
PERMANENT RULES
OFFICE OF THE
STATE TREASURER

[Filed July 23, 2009, 9:13 a.m., effective August 23, 2009]

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

Purpose: To amend and update the existing procedures followed by financial institutions that hold public funds in accordance with the Public Deposit Protection Act, as amended by chapter 9, Laws of 2009.

Citation of Existing Rules Affected by this Order: Repealing WAC 389-12-260; and amending WAC 389-12-010 through 389-12-320.

Statutory Authority for Adoption: Chapter 39.58 RCW.
Other Authority: RCW 39.58.040.

Adopted under notice filed as WSR 09-13-046 on June 11, 2009.

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 20, 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 25, Repealed 1.

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

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

Date Adopted: July 23, 2009.

Shad Pruitt
Deputy Treasurer

AMENDATORY SECTION (Amending Order 86-I, Resolution No. 86-003, filed 6/19/86)

WAC 389-12-010 Promulgation. The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter((s 25 and 160)) 9, Laws of ((1986)) 2009, hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations((- effective July 1, 1986)).

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-020 Definitions. Unless the context requires otherwise:

(1) ("Public depositary" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and whose charter has been approved by the commission to hold public deposits.

(2) "Financial institution" means any of the following which are located in this state and are lawfully engaged in business:

(a) Bank depositaries—Any branch of a bank engaged in the banking business in this state in accordance with RCW 30.04.300, and any state bank or trust company or national banking association.

(b) Thrift depositaries—Any state chartered mutual savings bank or stock savings bank, any state or federally chartered savings and loan association (including federally chartered savings bank-)) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depository as defined in chapter 39.58 RCW.

(3) "Investment deposits" ~~((shall))~~ means time deposits, savings deposits, and money market deposit accounts of public funds available for investment ~~((Savings deposits shall mean an interest-bearing deposit of public funds that is subject to withdrawal and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. Time deposit shall mean a single maturity or multiple maturity interest-bearing investment deposit of public funds, which is either evidenced by a certificate of deposit issued by a public depository, or reflected in a book-entry system of such depository approved by federal regulatory authorities, state supervisor of banking and/or state supervisor of savings and loan associations, and which is payable to a treasurer on a date certain. Such certificate shall not be negotiable, nor an interest in an investment deposit transferable, except between treasurers and/or public depositories. Money market deposit account shall mean an account established with a public depository in accordance with Public Law No. 97-320, the Garn-St. Germain Depository Institutions Act of 1982))~~ as defined in Regulation D, Title 12 Code of Federal Regulations (CFR) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depository;

(b) The public depository arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depository acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depository receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" ~~((shall))~~ means a formal accounting rendered by all public depositories to the commission, which details pertinent information of each depository ~~((as of the close of the last business day of each calendar quarter; the))~~ in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission ~~((not))~~ no later than ~~((thirty days after the end of each calendar quarter))~~ the date a depository's financial report is due to its federal regulatory authority. ~~((In addition, each public depository~~

~~shall submit to the commission a nonquarter monthly reporting of))~~

(7) "Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public funds and other pertinent information of each depository in a format supplied by the commission. ~~((This report shall be due))~~

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight working days after the ~~((end of each nonquarter month))~~ monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.

~~((5))~~ (11) "Date of loss" ~~((shall))~~ means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

(a) The date of the taking of possession of the financial institution by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a financial institution; or

(c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or

(d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

(e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

~~((6))~~ (12) "Depository pledge agreement" means a written ~~((tri-party))~~ tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, ~~((the trust department of the public depository;))~~ or ~~((any))~~ such other ~~((institution as))~~ third-party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institution(s). The agreement must be continuously, from the time of its execution, an official record of the ~~((bank))~~ financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

~~((7))~~ (13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement ~~((RCW 39.58.050))~~. A public depository ~~((wishing))~~ must submit a written request to the commission to reduce the amount of securities pledged

as collateral (~~(must submit a written request to the commission)~~). The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

~~((8))~~ (14) "Net worth" of a public depository means(~~(-~~

~~(a) For a bank depository, the aggregate of capital, surplus, undivided profits and all capital notes and debentures which are subordinate to the interest of depositors;~~

~~(b) For a thrift depository, the aggregate of such capital stock, guaranty fund, general reserves, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors, as are eligible for inclusion in otherwise determining the net worth of a mutual savings bank, stock savings bank, or savings and loan association, excluding appraised equity capital, income capital certificates, net worth certificates, and deferred losses on loans sold;)) the same as defined in RCW 39.58.010.~~

Net worth for ~~((both bank and thrift))~~ public depositories headquartered outside Washington state may be adjusted by the commission to reflect the depositories' proportional net worth position in Washington state.

~~((9))~~ (15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority: Provided, That for the purposes of this definition such financial institution need not be located or doing business in the state of Washington.

~~((10))~~ (16) "Out-of-state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

~~((11))~~ (17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-030 New public depositories. Any financial institution in the state of Washington eligible under the act, in order to become a public depository, must be approved by the commission and segregate collateral in the manner as set forth in these rules prior to the receipt of public deposits. Until such time as public depositories have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible securities, valued at market value, in an amount equal to not less than 10% of ~~((a))~~ uninsured public funds on deposit in said depository(~~(-~~ During the interim period in which a financial institution is required to file four consecutive reports, each such institution shall report to the commission on each commission report date in a format supplied by the commission)), or such other

sum or measure established by the commission by rule or noticed resolution.

NEW SECTION

WAC 389-12-035 Withdrawing public depositories.

No public depository shall be released from its duties and liabilities until such financial institution has reported four accurate, consecutive commission reports indicating a zero balance of public funds on deposit. At such time, upon request by a public depository, the commission shall terminate a financial institution's status as a public depository.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-040 Computation and report of maximum liability. On each commission report date each public depository shall ~~((recalculate))~~ calculate its maximum liability in a format ~~((to be))~~ supplied by the commission. ~~((Such))~~ The commission report shall, in addition to other information required by the commission in its discretion, ~~((show))~~ include the ~~((current))~~ amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, ~~((such))~~ the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of ~~((these))~~ uninsured public deposits for the four most recent commission report ~~((periods))~~ dates, and the depository's maximum liability as defined in chapter 39.58 RCW ((39.58.010(6))).

The ~~((quarterly))~~ commission report ~~((to the commission))~~ shall be received in the office of the commission ~~((not later than thirty days following each calendar quarter end))~~ by the commission report due date, and shall ~~((have attached a completed copy of the balance sheet and deposit liabilities portion of))~~ also include schedules, as determined by the commission, from the public depository's most recent ((consolidated)) financial report ((of condition or consolidated statement of condition as reported)) to ((the depository's primary regulator)) its federal regulatory authority. Any public depository failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depository the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Depositories ~~((will))~~ shall use this ~~((figure for the current report period and))~~ amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised ~~((figure))~~ amount by the commission.

Upon written request from a public depository the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed ~~((ten))~~ five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in ~~((section 19, chapter 177, Laws of~~

1984)) RCW 39.58.135, the depository shall immediately increase its collateral and the commission shall be so notified.

Each public depository shall provide to the commission a copy of any changes, amendments, or alterations to the public depository's financial report as submitted to ((appropriate)) its federal regulatory authority which relate to (a) deposits of states and political subdivision, and/or (b) net worth.

A monthly report of insured and uninsured public funds, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to the commission no later than ((eight working days following the end of each month)) the monthly report date. If applicable, adjustments to the depositories' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month ((except for those months in which the quarterly report must be submitted to the commission)). Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

NEW SECTION

WAC 389-12-045 Maximum liability established by resolution. Pursuant to RCW 39.58.010, the commission may from time to time set by resolution such other sum or measure to determine the maximum liability of a public depository. In setting such other sum or measure, the commission shall consider factors including, but not limited to, the overall market conditions for financial institutions, the extent to which public deposit protections might be lessened, and the effects such change may have on other public depositories.

NEW SECTION

WAC 389-12-047 Computation of maximum liability—Transition. The purpose of this section is to reconcile the computation of the maximum liability of a public depository in consideration of its definition prior to and subsequent to the enactment of chapter 9, Laws of 2009.

The maximum liability with reference to a public depository's liability under chapter 39.58 RCW shall be:

(1) A sum equal to ten percent of:

(a) All uninsured deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(b) The average of the balances of total public deposits reported prior to enactment of chapter 9, Laws of 2009 and uninsured public deposits reported subsequently on the public depository's four most recent commission report dates, whichever amount is greater; or

(2) Such other sum or measure as the commission may set by resolution.

For example, the computation of a public depository's maximum liability on March 31, 2009, will be greater of the uninsured public funds held on March 31, 2009; or the average of uninsured public funds held on March 31, 2009, plus total public funds held on December 31, 2008, September 30, 2008, and June 30, 2008.

This section shall have no prospective application to a public depository that has not withdrawn its participation pursuant to WAC 389-12-035 once a public depository has four consecutive commission report dates subsequent to the effective date of chapter 9, Laws of 2009.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-050 Valuation. Securities pledged as collateral by a public depository shall be reported at par and market value.

Market value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each depository shall provide, in a format supplied by the commission, a current listing of those securities pledged and their ((then)) current par and market ((and par)) value as of the commission report date.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-060 Deposit of collateral. Except for the exchange or substitution of securities having a like or greater market value, the trustee shall not permit the withdrawal of any security without advance written approval of the commission.

The trustee, under a depository pledge agreement, shall inform the commission whenever assets are delivered to or by the trustee by mailing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the receipt signed by the party that accepted delivery of such assets.

No costs, fees and expenses incidental to the functioning of the pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depository shall at all times maintain eligible collateral segregated and pledged with its trustee having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depository's responsibility regardless of the frequency and form of reports required by the commission.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-065 Aggregate deposit limitations. Whenever the public funds on deposit in a public depository exceed the limits set forth in ((section 19, chapter 177, Laws of 1984)) RCW 39.58.135, such depository shall immediately:

(1) Notify the commission; and

(2) Provide additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

When a depository's net worth position is reduced, such depository shall determine if any ((public)) treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depository shall

immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depository shall also advise the commission of its intent to:

(1) Provide one hundred percent collateralization of the excess deposits; or

(2) Allow the treasurer to withdraw such deposits in accordance with ~~((section 18, chapter 177, Laws of 1984))~~ RCW 39.58.130.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-071 Minimum standards for the financial condition of public depositories. Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depository ~~((must maintain a specified ratio of net worth to assets of not less than three percent))~~ shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depository. ~~If ((such ratio for)) a public depository ((shall fall below three percent)) is categorized as under-capitalized for purposes of section 38 of the FDIA, the public depository shall pledge securities as collateral, valued at current market value, in a total amount at least equal to one hundred percent of its ((current)) uninsured public deposits((- Provided, That)), or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depository to pledge additional collateral after consultation with the appropriate regulatory authorities.~~

The collateral pledged under this section shall not be less than the maximum liability as required in RCW 39.58.050(1), but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-075 Collateral level to be maintained. Whenever a public depository must pledge securities as collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the depository must monitor its uninsured public funds on deposit on a daily basis and maintain securities, valued at current market value, accordingly.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any financial institution, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depository's net worth has remained unchanged from that stated in the most recently rendered commission report.

AMENDATORY SECTION (Amending Order 77-XIII, filed 9/27/77)

WAC 389-12-090 Additional reports, inspections, audits. The commission may from time to time require such

additional reports as will facilitate the performance of its functions. All public depositories are required to submit to such inspections and/or audits of their public deposits and/or eligible collateral as the commission may from time to time require. Any public depository failing to respond timely to a request from the commission shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-100 Violations—~~((Penalty))~~ Sanction. ~~((Violations of))~~ If a public depository fails to comply with any of these rules, or of any of the provisions of the act ~~((shall be grounds for cancellation, suspension, or revocation of a financial institution's authority))~~, or any policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository complies with the commission's rules and policies.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-130 Financial institution mergers. The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, ~~((take over))~~ take over, or acquisition ~~((except to the extent that))~~. Such liability ~~((is))~~ shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no assets subject to a depository pledge agreement shall be released by the commission or the trustee until such assumed liability is evidenced by the deposit of assets pursuant to the depository pledge agreement of the successor entity or resulting financial institution.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-140 Demand deposit account with financial institution located outside the state of Washington. A treasurer or state treasurer may, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit

insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it shall have been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-200 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington public deposit protection commission with the provisions of chapter 42.56 RCW, chapter ~~((+))~~ 274, Laws of ~~((1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; and in particular with sections 25—32 of that act))~~ 2005, dealing with public records.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-220 Description of ~~((central and field organization of))~~ the Washington public deposit protection commission. The Washington public deposit protection commission is a state agency empowered to perform all duties prescribed by law with respect to the collateralization of public funds. The administrative offices of the ~~((Washington public deposit protection))~~ commission ~~((and its staff))~~ are located in the Office of the State ~~((treasurer's office in the))~~ Treasurer, Legislative Building, Olympia, Washington.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-230 Operations and procedures. The Washington public deposit protection commission is charged with the duty of protecting public funds on deposit by Washington's public treasurers and the state treasurer in the event of a default of a public depository, and such other duties as set forth in chapter 39.58 RCW.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-240 Public records available. All public records of the Washington public deposit protection commission ~~((as defined in WAC 389-12-210))~~ are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by ~~((section 31, chapter 1, Laws of 1973 and WAC 389-12-210))~~ chapter 42.56 RCW, chapter 274, Laws of 2005.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-250 Public records officer. The Washington public deposit protection commission's public records

shall be in the charge of the public records officer designated by the agency. The person so designated shall be located in the administrative office of the agency. The public records officer shall be responsible for the following: The implementation of the Washington public deposit protection commission's rules and regulations regarding release of public records, coordinating the staff of the commission in this regard, and generally insuring compliance by the staff with the public records disclosure requirements ~~((of chapter 1, Laws of 1973))~~. Persons submitting public record requests pursuant to these rules should submit those requests to Public Records Officer, Public Deposit Protection Commission, Office of the State Treasurer, Legislative Building, Olympia, Washington 98504.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-270 Requests for public records. In accordance with requirements of chapter 42.56 RCW, chapter ~~((+))~~ 274, Laws of ~~((1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures))~~ 2005:

(1) A request shall be made in writing upon ~~((a))~~ the form ~~((prescribed by the Washington public deposit protection commission which shall be available at its administrative office))~~ set forth in these rules herein or a substantially similar form. The form shall be presented to the public records officer, or to any member of the commission's staff, if the public records officer is not available, at the administrative office of the commission during customary office hours. ~~((The))~~ Any request on a form other than the form provided in these rules shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request ~~((was))~~ is made;
- (c) The ~~((nature of the request))~~ specified record requested;
- (d) ~~((If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~
- (e) ~~If the requested matter is not identifiable by reference to the commission's current index, an appropriate description of the record requested.~~

(2) ~~In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.)~~ The postal or electronic address at which the requester will accept written communication.

(2) All record requests shall be for a writing as that term is defined in statute, relating to the conduct of the public deposit protection commission, and prepared, owned, or retained by the commission. Requests shall be made by mail or verifiably received and acknowledged electronic mail.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-280 Inspection and copying. No fee shall be charged for the inspection of public records. Records shall be made available for inspection in accordance with chapter 42.56 RCW. Inspection shall occur at a time mutually agreed by the agency and requestor during customary office hours at a designated office location of the office of the state treasurer in Olympia, Washington. If copies are requested, the commission shall charge a fee of not to exceed ((25)) 15 cents per page, or actual costs as provided in RCW 42.56.070, of copy for providing copies of public records. This charge shall not exceed the amount necessary to reimburse the commission for its actual costs incident to such copying.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-290 Exemptions. (1) The commission reserves the right to ~~((determine))~~ assert that a public record requested in accordance with the procedures outlined in WAC 389-12-270, is exempt from disclosure under ((the provisions of section 31, chapter 1, Laws of 1973)) Washington law.

(2) ~~((In addition, pursuant to section 26, chapter 1, Laws of 1973,))~~ The commission reserves the right to delete ~~((identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing))~~ information exempted from disclosure under Washington law.

(3) All denials of requests for public records ~~((must))~~ shall be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-300 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such a decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the state treasurer as chairman of the commission. The chairman shall consider the matter and either affirm or reverse such denial or call a special meeting of the Washington public deposit protection commission as soon as legally possible to review the denial. In any case, the request

shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the ~~((system))~~ commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-310 Records index. It is unduly burdensome for the commission to prepare and maintain an index of their materials since there is no appropriation provision for administrative staff and all of the duties prescribed by statute are conducted by state treasurer staff members, in addition to their regularly assigned duties regardless of overtime requirements and without regard to additional pay. All records of the commission are and will be made available in accordance with the due processes as set forth in these rules and other applicable law.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-320 Request for commission's decisions and other matters—Procedure. All communications with the commission including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW, chapter ((+)) 274, Laws of ((+1973)) 2005, and these rules, requests for copies of the commission's decisions and other matters, shall be addressed as follows: ~~((Washington))~~ Public Deposit Protection Commission, ~~((e/o))~~ Office of State Treasurer, Legislative Building, Olympia, Washington, 98504.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 389-12-260 Office hours.

WSR 09-16-012

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 23, 2009, 11:03 a.m., effective August 23, 2009]

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

Purpose: Updates policies and procedures to base night-time driving restriction on visual acuity and update medical screening questions on driver's license application.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-010, 308-104-014, and 308-104-019.

Statutory Authority for Adoption: RCW 46.61.110, 46.20.041, 46.20.091, 46.20.120, and 46.20.130.

Adopted under notice filed as WSR 09-13-025 on June 8, 2009.

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

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

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

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

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

Date Adopted: July 22, 2009.

Doron N. Maniece
Assistant Director

AMENDATORY SECTION (Amending WSR 07-02-104, filed 1/3/07)

WAC 308-104-010 Vision test. (1) A person applying for a driver's license or instruction permit shall be required to take a vision test administered by the department.

(a) Any person (~~((with))~~) with visual acuity worse than 20/40 Snellen with both eyes combined either corrected or uncorrected, or with some apparent significant visual limitation, must have an eye examination by a competent vision authority.

(b) If an applicant's vision cannot be corrected so it will be 20/40 Snellen for visual acuity and if the applicant's vision is between 20/50 Snellen and 20/100 Snellen, or if an applicant's other vision problems cannot be corrected, he or she must submit to a reexamination.

(c) An applicant whose vision cannot be corrected to at least 20/100 Snellen range will be deemed to have failed the portion of the driver's license examination specified by RCW 46.20.130 (1)(a) pertaining to eyesight and ability to see, and will be deemed to have failed to demonstrate that he or she is qualified to drive.

(d) An applicant whose (~~((optometrist or ophthalmologist answers "no" to the question "In your professional opinion, can this individual see adequately to safely operate a vehicle at night,")~~)) vision cannot be corrected to at least 20/70 Snellen range will be deemed to have failed to demonstrate that he or she is qualified to drive at night.

(2) The department may waive the requirement for a vision test for any person applying to renew his or her driver's license by mail or electronic commerce if the person certifies on the application that his or her vision acuity is no less than 20/40 Snellen for visual acuity, either corrected or uncorrected, and that there are no other vision problems.

(3) The department shall refer for reexamination any person who uses bioptic or telescopic lenses to meet licensing standards for the issuance of any driver's license or instruction permit.

AMENDATORY SECTION (Amending WSR 05-15-064, filed 7/12/05)

WAC 308-104-014 Application for driver's license or identicard. A person applying for an original driver's license, instruction permit, or identification card must provide the following information:

(1) The person's full name, current mailing and residential address, and telephone number;

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date and place of birth;

(4) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, cancelled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a (~~((loss of consciousness or control within the last six months that))~~) mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 07-22-031, filed 10/29/07)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if he or she has received an authorization notice from the department.

(1) The department may send an authorization notice to a person whose valid driver's license is about to expire if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than sixty-five years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, enhanced driver's license or identicard, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that ~~((within the last six months he or she has not had a loss of consciousness or control that))~~ he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) The department may send an authorization notice to a person whose valid identicard is about to expire if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 09-16-017

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 24, 2009, 9:38 a.m., effective August 24, 2009]

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

Purpose: Rule making is required to comply with SHB 3029 that was passed by the legislature in 2008 allowing dealers to deliver a vehicle by obtaining an electronic copy of a dealer permit.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-420 Delivery of vehicle on dealer temporary permit.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 09-12-024 on May 26, 2009.

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

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

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

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

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

Date Adopted: July 24, 2009.

Mykel D. Gable
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 05-14-092, filed 6/30/05, effective 7/31/05)

WAC 308-56A-420 Delivery of vehicle on dealer temporary permit. How do I deliver a vehicle ~~((on))~~ using a dealer temporary permit?

(1) A vehicle dealer properly licensed pursuant to chapter 46.70 RCW may deliver a vehicle not currently registered or that does not bear valid Washington state license plates or tabs by utilizing ~~((a))~~ an electronic dealer temporary permit or a hard copy dealer temporary ~~((license))~~ permit.

Note: Effective July 1, 2011, an electronic dealer permit (e-permit) will replace a hard copy dealer permit. A hard copy dealer temporary permit will only be issued after July 1, 2011, in the instance of "system unavailability" (for example: An issue with auctions that go on-site and cannot access the internet) and an electronic permit cannot be issued.

(2) The application for title portion of the permit form must be properly and completely filled out by the selling/leasing dealer, including the dealer's report of sale and the date on which the vehicle is physically delivered to the ~~((customer))~~ purchaser/lessee. If license based on gross weight is required, the amount of gross weight purchased must be clearly shown. The application must be signed by the registered owner(s) or lessee.

(3) The dealer ~~((shall))~~ must collect all fees required for titling and registration of a vehicle.

(4)(a) For e-permit, the permit printed by the system must display the expiration date and e-permit number. The date of expiration is forty-five calendar days from the date the vehicle is physically delivered to the purchaser/lessee.

(b) For hard copy permits, the dealer ~~((shall))~~ must detach the hard copy of the dealer permit and ~~((shall))~~ must record the date of expiration in dark, bold letters and numbers

on the permit side of that copy. Date of expiration (~~((will be))~~) is forty-five calendar days (~~((after))~~) from the date (~~((on which))~~) the vehicle is physically delivered to the (~~((customer/))~~) purchaser/lessee.

(5) The application copies (~~((shall))~~) must be used by the dealer to apply for title and to complete licensing of the vehicle. Except as provided in RCW 46.70.180(8), when a second temporary permit is authorized; the selling dealer must submit the application and all title/licensing fees to the department of licensing or an authorized licensing agent within forty-five calendar days from the date (~~((on which))~~) the vehicle is physically delivered to the (~~((customer/))~~) purchaser/lessee. The date (~~((on which))~~) that the selling or leasing dealer physically delivers the vehicle to the (~~((customer/))~~) purchaser/lessee (~~((shall commence))~~) will start the forty-five day interval (~~((in which the selling or leasing dealer must make))~~) of an application for a certificate of title in the purchaser's or lessee's name. Additionally, the director may excuse late applications only in situations where applications are delayed, for reasons beyond the control of the dealer.

(6) The electronic or hard copy (~~((of the))~~) dealer temporary permit, temporary vehicle registration, and a purchase order identifying the vehicle and the date (~~((on which))~~) that the vehicle was physically delivered to the (~~((customer/))~~) purchaser/lessee must be carried in the vehicle or the towing vehicle at all times the vehicle is operated on the temporary permit.

(7) The electronic or hard copy (~~((of the))~~) dealer temporary (~~((license))~~) permit (~~((shall))~~) must be displayed on the inside of the rear window in the lower left corner, or enclosed in a moisture proof protective case securely attached in the rear license plate holder, with the expiration date visible to one standing (~~((or following at the rear of))~~) behind the vehicle.

(8) The electronic or hard copy dealer temporary (~~((license))~~) permit is valid for not more than forty-five calendar days (~~((commencing))~~) starting with the date (~~((on which))~~) that the vehicle is physically delivered to the (~~((customer/))~~) purchaser/lessee.

(9) The electronic or hard copy dealer temporary (~~((license))~~) permit (~~((shall))~~) will not be issued:

(a) (~~((Be issued))~~) For a dealer inventoried vehicle that has not been sold or a dealer or dealer-employee operated vehicle;

(b) (~~((Be issued))~~) As a demonstration permit;

(c) (~~((Be issued))~~) For a vehicle processed as a courtesy delivery.

(10) Fees paid for an electronic or hard copy dealer temporary (~~((license))~~) permit application forms are not refundable unless the dealer ceases doing business as a vehicle dealer. (~~((A credit, in the amount of the permit form fee, will be provided when the permit is used by the vehicle dealer to make application for a vehicle title.))~~)

(11) The dealer (~~((shall))~~) must maintain a record of each dealer temporary permit (~~((form))~~) acquisition and distribution including the following:

(a) Date and location of purchase of each permit and the permit number;

(b) Identification of vehicles delivered on temporary permits;

(c) Dates of vehicle sales, leases and deliveries.

WSR 09-16-018
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 24, 2009, 11:05 a.m., effective August 24, 2009]

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

Purpose: Amending WAC 181-79A-257, rules governing the awarding of professional certification to educators. The rule change ends out-of-state endorsements appearing on Washington state certificates in favor of endorsements appearing in chapter 181-82 WAC.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-79A-257].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-12-093 on June 1, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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 24, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-20-047, filed 9/26/07, effective 10/27/07)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31, 2000,) shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who passes the WEST-B and meets one of the following:

(a) Qualifies under provisions of the interstate compact.

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a region-

ally accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4).

(c) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years: Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.

~~(d) ((Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 181-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out-of-state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.~~

((e)) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

((f)) ((e)) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course

work or certification activities are equivalent to that college/university's approved program.

WSR 09-16-021

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 24, 2009, 12:35 p.m., effective August 24, 2009]

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

Purpose: HRSA is repealing WAC 388-517-0400 because medicare coinsurance, deductibles, and copayments are addressed in WAC 388-517-0320.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-517-0400.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Other Authority: Section 1902 (a)(10)(E)(iii) and Section 1905 (p)(3)(A)(ii) of the Social Security Act.

Adopted under notice filed as WSR 09-13-094 on June 16, 2009.

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 1.

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

Date Adopted: July 23, 2009.

Stephanie E. Schiller
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-517-0400

Medicare coinsurance payment—Extended care patient.

WSR 09-16-024

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 27, 2009, 8:06 a.m., effective August 27, 2009]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendment to the marketing order (chapter 16-512 WAC) was approved in a referendum of affected fryer producers pursuant to RCW 15.66.090.

Purpose: The Washington fryer commission petitioned the director to amend its marketing order. The revision decreases the assessment rate from .35 of one cent per pound live weight to .10 of one cent per pound live weight on all fryers, roasters, and broilers under the age of six months.

Citation of Existing Rules Affected by this Order: Amending WAC 16-512-040.

Statutory Authority for Adoption: Chapters 15.66 and 34.05 RCW.

Adopted under notice filed as WSR 09-09-107 on April 21, 2009.

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 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: July 27, 2009.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 04-07-128, filed 3/22/04, effective 4/22/04)

WAC 16-512-040 Assessments and assessment funds.

(1) **Assessments levied.** On and after the effective date of this amendment, there is hereby levied and there shall be collected by the commission as provided in the act, upon all fryers, roasters and broilers under the age of 6 months, an assessment of (~~(.35)~~) .10 of one cent per lb. live weight. Such assessment shall be paid by the producer thereof upon each and every pound of fryers, roasters, or broilers sold, delivered for sale or processed by him or her: Provided, That no assessment shall be collected on the following:

(a) Sales on a producer's premises by a producer direct to a consumer of thirty pounds or less of fryers from a producer's own production;

(b) Fryers of a producer's own production used by him for personal consumption; or

(c) Fryers donated or shipped for relief or charitable purposes.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such fryers sold, processed or delivered for sale or

processing by all producers of fryers for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefor. To collect assessments, the commission may require:

(i) Stamps to be known as "Washington fryer commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Payment of producer assessments before the fryers are shipped off the farm or payment of assessments at different or later times and in that event, any person subject to the assessments shall give adequate assurance or security for its payment as the commission shall require.

(iii) Every producer subject to the assessment under this order to deposit with the commission in advance an amount based on the estimated number of affected units upon which the person will be subject to assessments in any one year during which this marketing order is in force, but in no event shall a deposit exceed twenty-five percent of the estimated total annual assessment payable by the person. At the close of the marketing season the sums so deposited shall be adjusted to the total of assessments payable by the person.

(iv) Handlers receiving fryers from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at times required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of fryers handled, processed, delivered and/or shipped during the period prescribed by the commission.

(b) The commission is authorized to adopt rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No affected units of fryers shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued or stamp canceled, but no liability hereunder shall attach to common carriers in the regular course of their business. When any fryers for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemptions.

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the fryer commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all fryers sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer, which may include bills of lading, bills of sale, or receipts.

WSR 09-16-028**PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed July 27, 2009, 11:24 a.m., effective August 27, 2009]

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

Purpose: A student may take a mathematics course before attending high school meeting the criteria set forth in RCW 28A.230.090(4) but elect not to be given high school credit for the course as authorized in the statute. The previous version of WAC 180-51-066 required a student in this situation to repeat the course for credit in high school. While this may be the most educationally sound decision for one student, it may be more educationally appropriate for another student to move to the next level of math. The adopted amendments to WAC 180-51-066 will continue to allow a student the option of repeating the course. However, it will also permit a student the option of taking the next mathematics course in a progressive sequence. In certain prescribed circumstances, the adopted amendments to the rule would allow a student, who has successfully completed algebra II or integrated mathematics III in high school, to satisfy the remaining mathematics credit(s) through completion of a course(s) that is consistent with the student's educational and career goals.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-066.

Statutory Authority for Adoption: RCW 28A.305.215 (8), 28A.230.090.

Adopted under notice filed as WSR 09-11-130 on May 20, 2009.

Changes Other than Editing from Proposed to Adopted Version: A technical inaccuracy was fixed in subsection (1)(b)(iv)(B)(II) by changing the first occurrence of "integrated mathematics II" to "integrated mathematics I." This subsection in the adopted version is as follows: "A student who has successfully completed algebra I or integrated mathematics I, and geometry or integrated mathematics II, shall:

Earn the first high school credit in algebra II or integrated mathematics III; and

Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student."

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 17, 2009.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 08-18-013, filed 8/22/08, effective 9/22/08)

WAC 180-51-066 Minimum requirements for high school graduation—Students entering the ninth grade on or after July 1, 2009. (1) The statewide minimum subject areas and credits required for high school graduation, beginning July 1, 2009, for students who enter the ninth grade or begin the equivalent of a four-year high school program, shall total 20 as listed below.

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the tenth grade Washington assessment of student learning beginning 2008.

(b) Three **mathematics** credits that align with the high school mathematics standards as developed and revised by the office of superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(iii) or (iv) of this subsection, the three mathematics credits required under this section must include mathematics courses taken in the following progressive sequence:

(A) Algebra I, geometry, and algebra II; or

(B) Integrated mathematics I, integrated mathematics II, and integrated mathematics III; or

(C) Any combination of three mathematics courses set forth in (b)(i)(A) and (B) of this subsection.

(ii) A student may elect to pursue a third credit of mathematics, other than algebra II or integrated mathematics III if all of the following requirements are met:

(A) The student has completed, for credit, mathematics courses in:

(I) Algebra I and geometry; or

(II) Integrated mathematics I and integrated mathematics II; or

(III) Any combination of two mathematics courses set forth in (b)(ii)(A)(I) and (II) of this subsection;

(B) The student's elective choice is based on a career oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

(C) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra II or integrated mathematics III because it will better serve the student's education and career goals;

(D) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two and four year college level mathematics courses; and

(E) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed; and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(iii) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (b)(i)(A) or (B) or (ii)(A)(I) or (II) of this subsection if the CTE mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(iv) A student who prior to ninth grade successfully completed algebra I or integrated mathematics I, geometry or integrated mathematics II, or any combination of courses taken in a progressive sequence as provided in (b)(i)(C) of this subsection, but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Complete three credits of mathematics as follows:

(I) A student who has successfully completed algebra I or integrated mathematics I shall:

• Earn the first high school credit in geometry or integrated mathematics II;

• Earn a second high school credit in algebra II or integrated mathematics III; and

• Earn a third high school credit in a math course that is consistent with the student's education and career goals.

(II) A student who has successfully completed algebra I or integrated mathematics I, and geometry or integrated mathematics II, shall:

• Earn the first high school credit in algebra II or integrated mathematics III; and

• Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(c) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At

least one credit in laboratory science is required which shall be defined locally. Assessment shall include the tenth grade Washington assessment of student learning beginning 2010.

(d) Two and one-half **social studies** credits that at minimum align with the state's essential academic learning requirements in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in social studies at the high school level by 2008-09. In addition, districts shall require students to complete a classroom-based assessment in civics in the eleventh or twelfth grade also by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States. No other course content may be substituted as an equivalency for this requirement.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state.

(A) For purposes of the Washington state history and government requirement only, the term "secondary student" shall mean a student who is in one of the grades seven through twelve. If a district offers this course in the seventh or eighth grade, it can still count towards the state history and government graduation requirement. However, the course should only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090(4)).

(B) The study of the United States and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the local school principal under written district policy.

(C) Secondary school students who have completed and passed a state history and government course of study in another state may have the Washington state history and government requirement waived by their principal. The study of the United States and Washington state Constitutions required under RCW 28A.230.170 shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal under a written district policy.

(D) After completion of the tenth grade and prior to commencement of the eleventh grade, eleventh and twelfth grade students who transfer from another state, and who have or will have earned two credits in social studies at graduation, may have the Washington state history requirement waived

by their principal if without such a waiver they will not be able to graduate with their class.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(e) Two **health and fitness** credits that at minimum align with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in health and fitness at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095).

(i) The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally under WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students may be excused from the physical portion of the fitness requirement under RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement.

(ii) "Directed athletics" shall be interpreted to include community-based organized athletics.

(f) One **arts** credit that at minimum is aligned with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in arts at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.-095). The essential content in this subject area may be satisfied in the visual or performing arts.

(g) One credit in **occupational education**. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the office of the superintendent of public instruction. The assessment of achieved competence in this subject area is determined at the local district level.

(h) Five and one-half electives: Study in a world language other than English or study in a world culture may satisfy any or all of the required electives. The assessment of achieved competence in these subject areas is determined at the local district level.

(i) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations

related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(j) Each student shall have a high school and beyond plan for their high school experience, including what they expect to do the year following graduation.

(k) Each student shall attain a certificate of academic achievement or certificate of individual achievement. The tenth grade Washington assessment of student learning and Washington alternate assessment system shall determine attainment.

(2) State board of education approved private schools under RCW 28A.305.130(5) may, but are not required to, align their curriculums with the state learning goals under RCW 28A.150.210 or the essential academic learning requirements under RCW 28A.655.070.

WSR 09-16-034

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 27, 2009, 4:22 p.m., effective August 27, 2009]

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

Purpose: New statutes will be effective on July 1, 2010. This rule will allow applicants who have passed the test to have until July 1, 2010, in order to become licensed. After July 1, 2010, the applicants must comply with the new statutory requirements to become licensed.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124A-030.

Statutory Authority for Adoption: RCW 18.85.040.

Other Authority: RCW 18.85.130, 18.85.090, and 18.85.095.

Adopted under notice filed as WSR 09-13-016 on June 5, 2009.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: June [July] 23, 2009.

Walt Fahrner
Rules Coordinator

AMENDATORY SECTION (Amending Order PM 683, filed 10/7/87)

WAC 308-124A-030 Successful applicants must apply for license. Examination results are valid ~~((for one year only))~~ until July 1, 2010. Any person who has passed the examination for real estate broker or real estate salesperson licensure must become licensed ~~((within one year from the date of such examination))~~ by June 30, 2010. Failure to comply with this provision will necessitate fulfilling the requirements of RCW 18.85.101 or 18.85.111 and the taking and passing of ~~((another))~~ a new examination prior to licensure.

This section is effective until July 1, 2010.

WSR 09-16-035

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 28, 2009, 8:06 a.m., effective August 28, 2009]

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

Purpose: RCW 69.07.103 directs the department to adopt requirements for a temporary permit for the slaughter, preparation and sale of one thousand or fewer whole, raw pastured chickens. The 2009 legislature amended that section (SSB 5350) and expanded coverage to include poultry and the option of a one-year or two-year special permit. Due to the changes in the statute, the department must amend its rules under chapter 16-170 WAC for implementation of the expanded program.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-170-040; and amending WAC 16-170-010 through 16-170-037, and 16-170-050 through 16-170-180.

Statutory Authority for Adoption: RCW 69.07.103.

Other Authority: Chapters 69.07 and 34.05 RCW, chapter 114, Laws of 2009.

Adopted under notice filed as WSR 09-13-105 on June 17, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 25, 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 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: July 28, 2009.

Robert W. Gore
Deputy Director

Chapter 16-170 WAC

SPECIAL ~~((TEMPORARY))~~ PERMITS FOR SLAUGHTERING ~~((PASTURED CHICKENS))~~ POULTRY

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-010 What is the purpose of this chapter? The purpose of this chapter is to implement chapter ~~((397, Laws of 2003))~~ 69.07 RCW by establishing rules ~~((regulating))~~ relating to the:

(1) Issuance of special ~~((temporary))~~ permits regulating the slaughter, preparation and sale of one thousand or fewer whole raw ~~((pastured chickens))~~ poultry in a calendar year by the agricultural producer ~~((of those chickens))~~ when the ~~((chickens))~~ poultry are sold directly to the ultimate consumer at the producer's farm.

(2) Conditions under which ~~((the pastured chickens))~~ poultry identified in this ~~((section))~~ chapter are slaughtered, prepared and sold that are generally patterned after those established by the state board of health for temporary food service establishments under chapter 246-215 WAC but are tailored to poultry slaughter, preparation, and sale activities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-020 What definitions are important to this chapter? (1) In addition to the definitions contained in this section, definitions found in chapters 69.04 and 69.07 RCW, chapter 246-215 WAC and Title 21 CFR may apply.

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

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

"Agricultural producer" means a person or persons who raise ~~((pastured chickens))~~ poultry and who slaughter and sell one thousand or fewer ~~((of the chickens))~~ whole raw poultry from their farm directly to the ultimate consumer.

"Authorized person" means a person or persons who work with the agricultural producer in the preparation and slaughter of ~~((pastured chickens))~~ poultry under this chapter.

~~(("Chicken" means the species Gallus domesticus.))~~

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the WSDA.

~~(("Pastured chicken" means a chicken that has lived on pasture, range, or ground covered with vegetation that is suitable for grazing, during at least half the life span of the animal.))~~

"Potable water" means water that is ~~((=~~

~~((a) Safe and sanitary;~~

~~((b) Free from coliform; and~~

~~((c) From an approved and monitored source))~~ in compliance with chapter 16-165 WAC and with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

"Poultry" means domesticated fowl that is valued for its meat or eggs such as chickens, turkeys, ducks or geese.

"Sanitize" means to adequately treat ~~((chicken))~~ poultry slaughtering, preparation and sale surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the whole raw ~~((chicken))~~ poultry or its safety for the consumer.

~~"((Temporary)) Special permit"~~ means a permit to slaughter ~~((chickens covered by this chapter, which is valid for the calendar year for which it is))~~ poultry issued under RCW 69.07.103. The permit expires on December 31st and is issued for either one or two years as requested by the permit applicant.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-030 Who is required to obtain a ~~((temporary))~~ special permit to slaughter, prepare and sell ~~((pastured chickens))~~ poultry? ~~((If you are))~~ An agricultural producer of ~~((pastured chickens))~~ poultry who slaughters and prepares one thousand or fewer ~~((pastured chickens))~~ poultry in a calendar year and sells ~~((those chickens))~~ the poultry as whole raw ~~((chickens))~~ poultry from ~~((your))~~ their farm to the ultimate consumer, ~~((you))~~ must obtain a ~~((temporary))~~ special permit before ~~((you))~~ slaughter of the poultry.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-035 How can I obtain a ~~((temporary))~~ special permit? (1) ~~((You can request))~~ An application for a ~~((temporary))~~ special permit may be obtained by:

Writing to:

Washington State Department of Agriculture
Food Safety Program
P.O. Box 42560
Olympia, WA 98504-2560; or
Calling 360-902-1876; or
Faxing to 360-902-2087; or
Accessing web site <http://agr.wa.gov>.

(2) The department must receive ~~((your))~~ the completed special permit application packet along with check or money order for ~~((seventy-five dollars))~~ the permit fee at least six weeks ~~((before you plan to))~~ prior to the planned slaughter ~~((chickens))~~ of poultry. In accordance with RCW 69.07.-103(4), the fee for the special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years.

~~((Your))~~ (3) The special permit application packet must include:

- (a) A completed application form;
- (b) A diagram of ~~((your))~~ the slaughter/preparation site;
- (c) A description of ~~((your))~~ the processing steps or a process flow diagram;
- (d) The proposed days or dates of slaughter for the current year;
- (e) A description of ~~((your))~~ the rinse water and offal disposal procedures; and

(f) Documentation verifying that the water ~~((you use))~~ used at ~~((your))~~ the slaughter/preparation site complies with the requirements in WAC 16-170-155. If the well, spring or other private water supply, the water must have a passing bacterial test conducted within sixty days of submitting the application to the department. A copy of the test results must be attached to the special permit application.

~~((3))~~ (4) Once WSDA receives ~~((your))~~ the special permit application, ~~((you))~~ the applicant will be contacted ~~((for))~~ to schedule an on-site inspection. The inspection must occur before ~~((your))~~ the special ~~((temporary))~~ permit can be further processed or issued.

~~((4))~~ (5) Once received, ~~((your))~~ the special permit must be prominently and conspicuously posted at ~~((your))~~ the slaughter ~~((facility))~~ site so ~~((your))~~ customers ~~((can))~~ are able to see it.

~~((5) You are prohibited from))~~ (6) Slaughtering, preparing and selling ~~((chickens))~~ poultry regulated by this chapter ~~((until you receive your))~~ is prohibited prior to receipt of the special ~~((temporary))~~ permit.

NEW SECTION

WAC 16-170-036 What other information must I submit to the department if I am issued a two-year special permit? A two-year special permit holder must submit to the department the following information at least six weeks prior to slaughtering poultry during the second year of the permit:

- (1) The proposed second year days or dates of slaughter; and
- (2) If the site utilized a well, spring or other private water supply, a copy of a passing bacterial test conducted within sixty days prior to submitting the second year slaughter dates to the department.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-037 What type of slaughter/preparation site diagram is required? (1) ~~((Your))~~ The site diagram must clearly show the location of all poultry slaughter and preparation equipment, contact work surfaces, chilling equipment, equipment washing and sanitizing sinks or tubs, hand-washing areas, rinse water and offal collection areas and ~~((chicken))~~ poultry rearing areas.

(2) ~~((Everything))~~ All items illustrated on ~~((your))~~ the site diagram under subsection (1) of this section must be clearly labeled.

NEW SECTION

WAC 16-170-041 Must I reapply for a special permit if there is a change in the conditions under which my two-year special permit was issued? (1) If a significant change in the conditions under which the two-year special permit is issued, you must reapply for a special permit under WAC 16-170-035. Significant change under this section means a substantial change in the information previously submitted to the department under WAC 16-170-035.

(2) If the special permit holder was issued a two-year special permit and must reapply for a permit under this sec-

tion, the department will apply fifty dollars of the two-year permit fee towards the new permit application fee.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-050 Must I notify the department before I change the dates I plan to slaughter my ~~((chick-ens))~~ poultry? ~~((If you wish to))~~ The department must be notified at least one week in advance if slaughter ~~((pastured chickens))~~ of poultry regulated by this chapter is planned on dates other than those ~~((requested in your application, you must notify))~~ previously reported to the department. The department may be notified by mail, e-mail, fax, or by telephone ~~((with))~~ followed by a written confirmation ~~((at least one week before you slaughter any chickens regulated by this chapter))~~.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-060 What happens when I reach the one thousand ~~((chicken))~~ poultry limit in the statute? ~~((When you have slaughtered and sold one thousand whole raw pastured chickens to ultimate consumers from your farm in a calendar year, you no longer qualify for a temporary special permit for the remainder of the calendar year.))~~ The special permit issued under this chapter provides for the slaughter of a total of one thousand or fewer whole raw poultry to the ultimate consumer. Agricultural producers who slaughter more than one thousand ~~((chickens))~~ poultry in a calendar year must comply with the requirements of chapter 69.07 RCW.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-070 What are the site requirements for slaughtering, preparing and selling ~~((chickens))~~ poultry covered by this chapter? At a minimum, ~~((your))~~ the poultry slaughter/preparation site must:

- (1) Be constructed or assembled to minimize insects, pests, birds, dust, mud and overhead contamination;
- (2) Include adequate lighting to illuminate the areas where ~~((chickens))~~ poultry are slaughtered, prepared and sold;
- (3) Have an adequate handwashing station;
- (4) Be readily accessible to a toilet facility;
- (5) Include potable running water;
- (6) Include a means of safely disposing of rinse water and offal; and
- (7) Means of properly cooling slaughtered ~~((chickens))~~ poultry unless the customer takes possession within four hours.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-075 What requirements apply to the equipment used to slaughter, prepare and sell ~~((chick-ens))~~ poultry covered by this chapter? All equipment used

to slaughter, prepare and sell poultry must be readily cleanable and in good repair.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-080 Can a mobile processing unit be used to slaughter, prepare and sell ~~((pastured chickens))~~ poultry covered by this chapter? If the mobile processing unit (MPU) is a self-contained processing unit that meets all of the conditions designed for the sanitary processing of ~~((chickens))~~ poultry under this chapter, a MPU may be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-090 Who can be in my poultry slaughter site while the slaughter-preparation process is taking place? (1) Only authorized persons ~~((can be in your))~~ may be present in the poultry slaughter site while the slaughter-preparation process is taking place. Unauthorized persons must be kept out of the site.

(2) Any authorized person infected with a communicable disease, has open sores or infected cuts on hands, is vomiting or has diarrhea is prohibited from working in ~~((your))~~ the poultry slaughter site.

(3) Authorized persons are prohibited from smoking, eating or drinking while in ~~((your))~~ the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-100 Must I wear protective clothing while slaughtering, processing and selling ~~((pastured chickens))~~ poultry covered by this chapter? ~~((If))~~ Anyone slaughtering, preparing and selling ~~((pastured chickens))~~ poultry covered by this chapter must:

- ~~((a))~~ (1) Wear clean and adequate clothing.
"Clean and adequate" means that the clothing must be:
~~((i))~~ (a) Clean at the start of the slaughter-preparation-sale process; and
~~((ii))~~ (b) Changed when the clothing becomes soiled when contamination of the raw whole ~~((chicken))~~ poultry, any process work surface, the equipment used to chill slaughtered ~~((chickens))~~ poultry or the bags used to transport ~~((chickens))~~ poultry that are sold becomes imminent; and
~~((iii))~~ (c) Suitable to the specific part of the process (slaughter, preparation or sale) ~~((in which you are engaged))~~.
- ~~((b))~~ (2) Remove hand jewelry that cannot be adequately sanitized during periods when carcasses are handled by hand. If such hand jewelry cannot be removed, impermeable or disposable gloves must be worn.
~~((c))~~ (3) Maintain gloves, if they are used in processing, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material.
~~((d))~~ (4) Clean and effective hair restraints, such as hairnets or beard nets are not required, but hats, caps, scarves or other head covers are recommended to prevent contamination of the whole raw ~~((chickens))~~ poultry being slaughtered, prepared and sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-110 Can I store personal garments and belongings in my poultry slaughter site? All personal garments and belongings must be stored separately and apart from ~~((your))~~ the poultry slaughter site to ensure that they do not become a source of contamination to the raw whole ~~((chickens))~~ poultry, slaughter and preparation work surfaces and equipment, and the bags used to transport ~~((chickens))~~ poultry that are sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-115 Can I store detergents, sanitizers and other materials in my poultry slaughter site? (1) ~~((You can store))~~ Commercially purchased detergents, sanitizers and other materials related to the process may be stored in ~~((your))~~ the poultry slaughter site if they are properly labeled with:

- (a) Product name;
- (b) Chemical description;
- (c) Directions for use;
- (d) Any required precautionary and warning statements;
- (e) First-aid instructions;
- (f) Name and address of the manufacturer or distributor; and
- (g) Any other information required by the U.S. Environmental Protection Agency or other laws or rules.

(2) ~~((You can store))~~ Small "transport" or "use" containers containing detergents, sanitizers or other materials may be stored in ~~((your))~~ the slaughter site but only under the following conditions:

- (a) The contents must be properly identified on the container. Labeling the container with the common name is acceptable if the original commercially purchased storage container is on hand and properly identified.
- (b) Food containers must not be used as containers for detergents, sanitizers or toxic materials.
- (c) Containers used for detergents, sanitizers or other materials must not be used as food containers.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-120 Must I wash my hands before slaughtering ~~((chickens))~~ poultry? (1) ~~((You))~~ Anyone involved in the poultry slaughter process must adequately wash ~~((your))~~ their hands:

- (a) Before ~~((you begin))~~ the poultry slaughtering process begins;
 - (b) Between the slaughtering and preparation steps in the process;
 - (c) Between the poultry preparation and sale steps in the process;
 - (d) After each absence from the poultry slaughter ~~((facility))~~ site; and
 - (e) Any time ~~((your))~~ hands become contaminated.
- (2) "Adequately washing ~~((your))~~ hands" means thoroughly washing ~~((your))~~ hands to prevent contaminating

~~((your))~~ the slaughtered ~~((chickens))~~ poultry. Adequate hand-washing methods consist of:

- (a) Applying soap to ~~((your))~~ hands;
- (b) Using warm water;
- (c) Scrubbing your hands thoroughly; and
- (d) Using methods to rinse and dry ~~((your))~~ hands that prevent contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-125 Are handwashing stations required at my ~~((chicken))~~ poultry slaughter site? (1) Anyone involved in ~~((your chicken))~~ the poultry slaughter process must have access to at least one handwashing station equipped with warm running water, hand soap, and paper towels.

(2) Handwashing stations must be conveniently located in ~~((your))~~ the poultry slaughter site and near ~~((your))~~ toilet facilities.

(3) If handwashing stations are not conveniently located in ~~((your))~~ the poultry slaughter site and near ~~((your))~~ toilet facilities, five-gallon insulated containers with continuous flow spigots filled with warm water between one hundred and one hundred and twenty degrees Fahrenheit with pump type liquid soap, paper towels and five-gallon buckets to catch rinse water are required on-site and near ~~((your))~~ the toilet facilities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-130 Can I use hand dips at my ~~((chicken))~~ poultry slaughter site? (1) "Hand dips" or "hand sanitizing stations" are recommended but not required in ~~((your chicken))~~ the poultry slaughter site. Sanitizing ~~((your))~~ hands using hand dips or hand sanitizing stations is not a substitute for adequate handwashing methods. ~~((2))~~ However, if ~~((you use))~~ hand dips are used, they must be properly positioned and maintained.

~~((2))~~ (2) "Properly maintained" means sanitizing solutions are:

- (a) Checked and recharged to a strength equal to 100 PPM chlorine or 25 PPM iodine; and
- (b) Changed every four hours while in use.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-135 Do I need a toilet near my ~~((chicken))~~ poultry slaughter site? (1) At least one toilet must be available and conveniently located at ~~((your chicken))~~ the poultry slaughter site.

(2) A domestic toilet is sufficient if ~~((your))~~ the poultry slaughter operation is a family operation where only family members are employed. However, if ~~((you have))~~ the operation has employees, ~~((you must provide))~~ toilet facilities must be provided at ~~((your))~~ the slaughtering site or ~~((allow your))~~ employees must be allowed to use ~~((your))~~ the domestic toilet.

(3) Portable chemical toilets may be used at the poultry slaughter site if they are conveniently located with a self-closing door, screened to exclude insects, and properly maintained.

(4) All nondomestic toilet areas must be kept clean, free of trash and litter, and in good repair. All doors used to enter the nondomestic toilet area must be self-closing and must not open directly into ~~((your))~~ the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-140 What offal and rinse water disposal requirements apply to my ~~((chicken))~~ poultry slaughter site? ~~((Your chicken))~~ The poultry slaughter site must be designed and maintained to ensure that the:

(1) Offal and rinse water the site generates are readily and safely removed; and

(2) Offal and rinse water do not create an unsanitary condition or contaminate:

(a) The raw whole ~~((chickens that you slaughter))~~ poultry;

(b) Any potable water stored and used at ~~((your))~~ the slaughter site;

(c) Any product contact surfaces at ~~((your))~~ the slaughter site; or

(d) Any bags used to package raw whole ~~((chickens))~~ poultry sold to ~~((your))~~ the ultimate consumers.

(3) ~~((Your))~~ The rinse water disposal system must not allow any backflow from or cross connection between the piping that discharges rinse water and the piping that carries potable water to the ~~((chicken))~~ poultry slaughter area.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-145 How do I store my ~~((chicken))~~ poultry slaughter equipment and utensils to prevent contamination? (1) All of ~~((your chicken))~~ the poultry slaughter equipment and utensils must be stored so they will not become contaminated between uses.

(2) All utensils used to slaughter and prepare ~~((chickens))~~ poultry, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, must be placed or stored to prevent contact surfaces from being contaminated.

(3) Contaminated equipment and utensils must be cleaned and sanitized before they are used again.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-150 How do I ensure that my ~~((chicken))~~ poultry slaughter contact surfaces are clean and maintained in a sanitary condition? (1) All contact surfaces of equipment, utensils, containers and other articles used in the slaughter and preparation of ~~((chickens))~~ poultry, must be kept free of any residue or contaminant that could contaminate or adulterate (as defined in RCW 69.04.210), the raw whole ~~((chicken))~~ poultry carcass.

(2) Residues and contaminants must frequently be removed from all slaughter and preparation contact surfaces to prevent the residues from becoming:

(a) Unwholesome or unfit for the raw whole ~~((chicken))~~ poultry carcass;

(b) Decomposed, filthy, or putrid; or

(c) Injurious to public health.

(3) All poultry slaughter and preparation contact surfaces must be sanitized:

(a) Before they are used; and

(b) After they are cleaned.

(4) ~~((You must keep))~~ A separate bucket of sanitizer must be kept in ~~((your))~~ the poultry slaughter site for rinsing/storing the wipe down cloths used to sanitize all slaughter equipment and slaughter/preparation contact surfaces. The sanitizing solution in the bucket should be at a minimum 100 ppm (mg/L) for chlorine solution or 50 ppm (mg/L) for iodine solution.

(5) Any noncarcass contact surfaces of equipment used in the slaughter of ~~((chickens))~~ poultry must be kept reasonably free of dirt, old slaughter/preparation residues, foreign material, dust, mold, mildew, slime and other accumulations that occur as a result of the slaughter/preparation operation.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-155 What requirements apply to the water used in my poultry slaughter site? (1) Any water ~~((you use))~~ used in the slaughter, preparation or sale of your ~~((chickens))~~ poultry must be of a safe and sanitary quality, which means the water supply is potable from an approved source and is monitored according to applicable laws and rules.

(2) Processors that operate from single-family residences on private water supplies need only meet bacteriological testing requirements. Optionally, potable water may be hauled onto the poultry slaughter site for use by the processor as long as the transport vehicle and water are of safe and sanitary quality.

(3) Water used from a private water system for the slaughter, preparation or sale of poultry must be sampled and tested at least annually. Copies of ~~((your))~~ water test reports must be on file at ~~((your))~~ the farm and available for review by WSDA during routine slaughter site inspections.

(4) Any ice ~~((you manufacture))~~ manufactured on ~~((your))~~ the farm for use in ~~((your))~~ the poultry slaughter process must be manufactured from potable water.

(5) All ice used at the poultry slaughter site that ~~((you do))~~ is not ~~((manufacture))~~ manufactured on the farm must be from an approved source.

(6) All ice ~~((that you use))~~ used at ~~((your chicken))~~ the poultry slaughter site must be properly handled and stored to protect against contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-170 What requirements apply to the storing and handling of the bags I give my customers to transport the ~~((chickens))~~ poultry they purchase from

me? (1) All bags ~~((that you use))~~ used to package the slaughtered whole ~~((chickens that you sell to your customers))~~ poultry must be new, of food grade quality and properly handled and stored, which means they must be protected from potential sources of contamination when they are handled and stored.

(2) Methods of properly handling and storing ~~((your))~~ bags at ~~((your))~~ the poultry slaughter site include, but are not limited to:

(a) All bags must be stored off of the floor or any other unsanitary surfaces.

(b) All bags must be stored in closed boxes or cartons before they are used.

(c) Bags must be removed from the closed box or carton in a way that prevents contamination.

(d) When a slaughtered whole ~~((chicken))~~ poultry is inserted into a bag, the bag must be handled so it and the ~~((chicken are))~~ poultry is not exposed to contamination by dust, foreign material or other contaminants.

(e) Any bag dropped on the floor or some other unsanitary surface must not be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-175 What requirements apply to the chilling and storing of slaughtered ~~((chickens))~~ poultry?

(1) All slaughtered ~~((chickens))~~ poultry must be chilled to a temperature at or below forty-five degrees Fahrenheit within four hours of slaughter unless the customer takes possession of the slaughtered ~~((chickens))~~ poultry during this time.

(2) Chilling poultry may be accomplished through the use of mechanical refrigeration, an ice chest using ice from an approved source (see WAC 16-170-155), or by being immersed in cold running water.

(3) A temperature control (TC) must be used to monitor slaughter cool down temperature by inserting a calibrated thermometer into the thickest portion of the first slaughtered poultry carcass and monitoring the temperature to ensure proper chilling at or below forty-five degrees Fahrenheit within four hours of slaughter.

(4)(a) Slaughtered ~~((chickens))~~ poultry can be stored for up to forty-eight hours before they are sold.

(b) During their storage period, ~~((chicken))~~ poultry carcass temperatures must be kept at or less than forty-five degrees Fahrenheit by mechanical refrigeration equipped with a thermometer or by maintaining the carcasses in a properly designed storage container with the use of a temperature control (TC) as outlined in subsection (3) of this section.

(5) All chilled and/or stored ~~((chicken))~~ poultry carcasses must be protected from physical, chemical, microbial contamination and deterioration.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-180 What recordkeeping requirements apply to my ~~((temporary))~~ special permit ~~((chicken))~~ poultry slaughter operation? (1) At a minimum, ~~((you must keep))~~ the following records must be kept at ~~((your))~~ the special permit holder's farm:

(a) ~~((Your chicken))~~ A record of the poultry slaughter dates;

(b) The number of ~~((chickens))~~ poultry by species slaughtered on each slaughter date and the cumulative total of ~~((chickens))~~ poultry by species slaughtered;

(c) The temperature control log monitoring proper ~~((chicken))~~ poultry slaughter cool down and storage; and

(d) The water testing records if required by WAC 16-170-155.

(2) All records required under subsection (1) of this section must be:

(a) Maintained so that the information they intend to convey is clear and understandable.

~~((3) All records must be))~~ (b) Available at ~~((your))~~ the farm and available to department inspectors upon request.

~~((4) All records must be))~~ (c) Retained at the farm for six months after the expiration of the special permit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-170-040

How long is my temporary special permit valid?

WSR 09-16-045

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed July 28, 2009, 12:00 p.m., effective August 28, 2009]

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

Purpose: The purpose is to clarify the scope and nature of the right of a foster parent to notice and an opportunity for a hearing to contest a foster care rate assessment.

The department is creating new sections WAC 388-25-0001, 388-25-0003, 388-25-0011, 388-25-0016, 388-25-0022, 388-25-0027, 388-25-0032, 388-25-0037, 388-25-0042, 388-25-0047, 388-25-0052, 388-25-0057, 388-25-0062, 388-25-0067, 388-25-0072, 388-25-0077, 388-25-0082, 388-25-0087, and 388-25-0107.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-25-0070, 388-25-0080, 388-25-0085, 388-25-0120, 388-25-0160, 388-25-0170, 388-25-0180 and 388-25-0205; and amending WAC 388-25-0095, 388-25-0195, and 388-25-0200.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 09-10-024 on April 28, 2009.

Changes Other than Editing from Proposed to Adopted Version: The CR-102 Notice of proposed rule-making listed WAC 388-25-0225 and 388-25-0235 in the repealer section. This proposal caused concern for the DSHS division of child support (DCS) as these two sections deal with foster care referrals to DCS. The department has made the decision not to repeal these two WACs at this time.

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 19, Amended 3, Repealed 8.

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 19, Amended 3, Repealed 8.

Date Adopted: July 27, 2009.

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-25-0001 What kinds of financial support are available to licensed foster care providers? In addition to medical assistance and other services that may be provided to meet the specific needs of a foster child, the department provides licensed foster parents with a monthly foster care maintenance payment. This payment is for the benefit of the child.

NEW SECTION

WAC 388-25-0003 What is the purpose of the foster care maintenance payment? The purpose of the foster care maintenance payment is to assist licensed foster parents in meeting the needs of their foster child. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments (levels 2, 3 and 4) which are paid to foster parents who care for children with varying degrees of physical, mental, behavioral or emotional conditions that require increased effort, care or supervision that are above the needs of a typically developing child.

NEW SECTION

WAC 388-25-0011 What method does the department use to determine what foster care rate will be paid for a foster child? The department uses a standardized assessment tool, the foster care rate assessment, to determine the foster care rate that will be paid on behalf of the child. The tool assesses the needs of the child and the foster parent's ability and time required to meet those needs.

NEW SECTION

WAC 388-25-0016 What are the essential features of the foster care rate assessment system? The foster care rate assessment system includes the following essential features:

(1) Foster care maintenance payments are based on foster parent time and the nature of activities needed to meet the needs of the child.

(2) A standardized assessment tool is used for all children.

(3) The assessment tool is completed jointly by foster parent and social worker or a rate assessment specialist.

(4) Assessments are updated periodically, in accordance with WAC 388-25-0032.

(5) The assessment process is automated.

NEW SECTION

WAC 388-25-0022 How does the foster care rate assessment work? The foster care rate assessment is a two-step process that includes the participation of the child's foster parent.

(1) Step one: The child's social worker or designated rate assessment specialist will meet with the foster parent in person or telephonically to jointly complete the standardized assessment form.

(2) Step two: After step one has been completed, the child's social worker or designated rate assessment specialist enters the information from the assessment into the computer and, based on the responses to the questions in the standardized assessment, the rate assessment software program automatically calculates the foster care rate that will be paid on behalf of the child.

NEW SECTION

WAC 388-25-0027 What factors are considered in the foster care rate assessment? The assessment tool considers the average number of hours, beyond those expected for a typically developing child of the same age, the foster parent spends in:

(1) Caring and/or advocating for the child to meet the child's physical and behavioral needs;

(2) Participating in parenting activities related to the child's physical or emotional/behavioral therapeutic plan;

(3) Engaging in parenting activities related to supervising and supporting the educational needs of the child;

(4) Participating in parenting activities related to scheduling, arranging, and supervising activities, such as medical and dental appointments for the child, visits between the child and his or her parents and/or siblings, or other school or recreational activities;

(5) Repairing, cleaning or replacing household items, over and above normal repair, due to the child's chronic physical problems or destructive behavior; and

(6) Preparing the child to transition back to the child's parents or to an adoptive or other foster care placement.

NEW SECTION

WAC 388-25-0032 How often do the foster parent and social worker meet to complete the rate assessment? The social worker or designated rate assessment specialist will meet with the foster parent in person or telephonically to complete the assessment:

- (1) Within thirty days of the child's placement in the foster parent's home;
- (2) At least every six months after the first assessment; and
- (3) When there is a significant change in circumstances for the child or in the foster parent's ability or time required to meet the child's needs.

NEW SECTION

WAC 388-25-0037 What are the reimbursement levels? The amount of foster care maintenance payments may change slightly from year to year. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments that are paid to foster parents who care for children with varying degrees of physical, mental, behavioral, emotional and/or intellectual conditions that require increased effort, care or supervision. The levels of payments are as follows:

(1) **Level 1:** Children assessed at this level receive the basic foster care maintenance rate. The payment is based on the time typically spent by a foster parent to meet the needs of a child, who is developing comparably to children in the same age range. The payments are based on three age categories: birth to five years old, six to eleven years old, and twelve to eighteen years old.

(2) **Level 2:** Children assessed at this level require the foster parent's increased attention, time and supervision, beyond that required to meet the child's basic or routine needs, to address specific physical, mental, behavioral, emotional and/or intellectual challenges.

(3) **Levels 3 and 4:** Children assessed at these levels have the highest needs for attention and care. These children require significantly more time from the foster parent because of the severity of their issues. These children often will be participating in more than one treatment program, and may need to participate in treatment in the foster parent's home. A child assessed at level 3 or 4 may have serious medical, behavioral or psychiatric issues or behaviors that require a safety plan.

NEW SECTION

WAC 388-25-0042 Can the child be assessed at a different level, depending on the foster home? The assessment is based on both the child's needs and the foster parent's ability and time required to meet those needs. It is possible that a child would be assessed at a different rate in one home than in another, depending on the foster parent's abilities or circumstances as well as the resources and support services available to the child and foster family.

NEW SECTION

WAC 388-25-0047 Can the assessment change if the child's needs change? The child will always receive at least the basic rate (level 1) for the child's age category. However, the child may be assessed at level 2, 3, or 4, as the child's needs change or the circumstances of the foster parents change.

For example: In cases where the child's needs decrease or the time required of the foster parent to meet the child's needs decreases, the standardized assessment may assess the child at a lower rate. For example, on a reassessment a child might be assessed at level 2, when the child's previous rate had been at level 3. In cases where the child's needs or the demands on the foster parent increase, the standardized assessment may assess the child at a higher level.

NEW SECTION

WAC 388-25-0052 How will the foster parent be notified of the rate the child will receive? The foster parent will receive a written letter and payment plan, generated by the department's foster care rate assessment computer program, which will notify the foster parent of

- (1) The amount of the monthly foster care maintenance payment that will be paid on behalf of the child;
- (2) The right to review of the assessment and;
- (3) How to exercise the right of review.

NEW SECTION

WAC 388-25-0057 Can a foster parent challenge the rate assessment? A foster parent, acting on behalf of the foster child, may request a review of the rate assessment for the child.

NEW SECTION

WAC 388-25-0062 How does a foster parent seek a department review of the rate assessment? (1) The foster parent must make a written request for department review of the assessment.

(2) The request must be received by CA within twenty calendar days of the date of the letter informing the foster parent of the rate assessed for the child. If a request is not made within twenty days, the department will not review the assessment.

(a) The department may grant a twenty-day extension of time for filing the request for review, if the foster parent has contacted a regional foster parent liaison within the initial twenty-day time period and asked for assistance in informally resolving any disagreement as to the rate assessed.

(b) The department has the discretion and may grant a twenty-day extension for good cause.

(3) The request must include a statement explaining why the foster parent believes the assessed rate is incorrect. The foster parent may provide additional information that he or she believes is relevant to the questions asked on the foster care rate assessment standardized form.

(4) The request must be sent to the individual and address identified in the letter informing the foster parent of the rate assessed for the child.

Reviser's note: The spelling error 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.

NEW SECTION

WAC 388-25-0067 What does the department consider in reviewing the request? (1) The review will be conducted by department management level staff, or by a designee who was not involved in the rate assessment process.

(2) The review will be conducted within ten days of receiving the request for review.

(3) The reviewer will consider:

(a) Whether the foster parent and the social worker or designated rate assessment specialist met in person or telephonically to jointly complete the standardized assessment form;

(b) Whether the information obtained through the conversation between the social worker or rate assessment specialist and the foster parent was accurately recorded on the form;

(c) Whether any additional information provided by the foster parent, as authorized in WAC 388-25-0060(3) is relevant to the automated assessment;

(d) Whether the information was accurately entered into the computer program; and

(e) Whether the computer program was properly functioning in calculating the rate and providing the written report of the assessment.

(4) The department will not consider information about the child or the foster family that is outside the standardized assessment form and will not alter the computerized calculation that is based on a properly completed form.

NEW SECTION

WAC 388-25-0072 How does the foster parent learn about the department's decision on review? (1) The department will send the foster parent a written letter notifying the foster parent that the department either:

(a) Upholds the rate assessment; or

(b) Agrees the rate was wrongly calculated and adjusts the rate to the proper level.

(2) If the department upholds the rate assessment, the notice will provide information about further review.

NEW SECTION

WAC 388-25-0077 How does the foster parent appeal the department's decision on review? (1) If the department upholds the rate assessment on review, the foster parent has the right to further challenge the assessment by timely requesting an administrative hearing.

(2) The request must be in writing and sent to the office of administrative hearings (OAH). WAC 388-02-0025 lists the current addresses for OAH.

(3) The request must be received by OAH within twenty days from the date of the letter notifying the foster parent of the department's decision on review.

(4) Foster care providers and recipients of foster care funds do not have a right to request an administrative hearing to challenge or dispute the established rates of the foster care program or to challenge the foster care rate assessment standardized form or program.

NEW SECTION

WAC 388-25-0082 What law and rules govern the administrative law judge? Chapter 34.05 RCW, chapter 388-02 WAC, and the sections of this chapter relating to foster care rate assessments govern any administrative hearing to review a child's foster care rate assessment. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

NEW SECTION

WAC 388-25-0087 What issues may be decided by the administrative law judge? (1) The administrative law judge (ALJ) will consider only:

(a) Whether the foster parent and the social worker or designated rate assessment specialist met in person or telephonically to jointly complete the standardized assessment form;

(b) Whether the information obtained in the meeting between the social worker or rate assessment specialist and foster parent was accurately recorded on the form;

(c) Whether additional information provided by the foster parent on review to the department was accurately recorded on the form, if applicable;

(d) Whether the information was accurately entered into the computer program; and

(e) Whether the computer program was properly functioning in calculating the rate and providing the written report of the assessment.

(2) The ALJ must not consider information about the child or the foster family that is outside the standardized assessment form or that was not provided to the department at the time of the assessment or at the time of the department's review of the assessment.

(3) The ALJ must not make a determination that conflicts with a properly completed standardized foster care rate assessment.

(4) The ALJ must not consider a challenge to the department's established foster care rates or to the foster care rate assessment standardized form or program.

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-25-0095 What are the requirements for release of foster parents' ~~((care))~~ licensing records? Foster parent ~~((care))~~ licensing records may be disclosed upon request in accordance with RCW ~~((42.17.260))~~ 42.56.070.

NEW SECTION

WAC 388-25-0107 What is the beginning date for payment of foster care? (1) The department begins foster care payment for a child on the date the department or its authorized designee places the child in the licensed foster home.

(2) The department pays for each night a child resides in foster care.

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-25-0195 How does the department make reimbursement for foster care for a child served by the department who moves out-of-state with the foster family? ~~((1))~~ A child may join a foster family in a move out-of-state only if this move supports achieving a permanency goal as outlined in the child's case plan.

~~(2) The department and the foster parent must follow CA requirements when a foster child and the licensed foster family moves out-of-state. This may include obtaining permission of the court before the move.~~

~~(3) When the foster family moves to another state, the department must arrange with the other state or local social service agency to license and supervise the home and the placement (see chapter 26.34 RCW). The department does not need to make such arrangements for supervision when the family leaves this state during a vacation.~~

~~(a) Before the foster family moves from Washington to the new state, the social worker or the foster parent may request a foster home license application from the new state.~~

~~(b) If the department and the foster parent are unable to obtain an application for license before the foster family leaves Washington, the foster parent must, upon arrival in the new state of residence, contact the local foster home licensing agency in the new state to apply for a license in that state.~~

~~(4) When the foster family moves to another state with a child in the department's custody, the child's DCFS social worker must submit necessary interstate compact on the placement of children (ICPC) application forms to the department's ICPC program manager. The social worker must do this as soon as the foster family has a new residence or address in the new state. The ICPC request must ask that the new state license the family as a foster home and provide ongoing supervision of the child in care.~~

~~(5) The department continues payments at the department's current rates until the other state fully licenses the home. After receiving a copy of the foster family home license from the other state, the DCFS supervising social worker authorizes payment at the receiving state's rates (see WAC 388-25-0195)). When the foster family moves to another state, the department must arrange with the other state or local social service agency to license and supervise the home and the placement (see chapter 26.34 RCW).~~

After receiving a copy of the foster family home license from the other state, the DCFS supervising social worker authorizes payment.

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-25-0200 What payment procedures must the department follow for children placed across state borders? (1) When the department places a child into a new placement with a family residing and licensed in another state, the DCFS social worker must obtain the payment rates from that state. Following receipt of the other state's rates, the department will pay that state's rates ~~((in accordance with ICPC procedures when:~~

~~(a) Those rates are higher than Washington's rates; and~~

~~(b) The other state identifies its rates to the department)).~~

~~(2) ((When the child welfare department in another state places a child, who is a resident of the state of Washington, in foster care the department makes foster care payments at the rate requested by that state.~~

~~(3)) The ((CA)) children's administration interstate compact on placement of children (ICPC) program manager must approve out-of-state placement before the department makes payment for foster care.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-25-0070	When does the department authorize foster care payments?
WAC 388-25-0080	Are dependency guardians who are licensed foster parents able to receive payment from more than one source?
WAC 388-25-0085	What happens if the dependency guardian receives payments from more than one source?
WAC 388-25-0120	What is the department's reimbursement schedule for regular family foster care?
WAC 388-25-0160	What are the reimbursement standards for payments above the basic foster care rate?
WAC 388-25-0170	What other services and reimbursements may be provided for the support of children placed in foster care by the department?
WAC 388-25-0180	Under what circumstances may the department provide reimbursement for foster care if the child is temporarily absent from the foster home or facility?
WAC 388-25-0205	How does the department treat the earnings of a child in foster care?

WSR 09-16-046

PERMANENT RULES

EXECUTIVE ETHICS BOARD

[Filed July 28, 2009, 1:47 p.m., effective August 28, 2009]

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

Purpose: Further clarifies RCW 42.52.160. Allows that all forms of technology (computers, e-mail, internet and telephones) are treated alike. This amendment also reinforces the fact that all communications made on a state-owned device may be subject to the Public Records Act.

The amendment also clarifies that public resources may not be used to support an outside business or group, including a private business or political party. However, public resources may be used to support a nonprofit organization if provided for by law or authorized by an agency director.

The board receives many questions regarding the use of state resources. By amending the rule, we believe that agency employees will gain a better understanding of the rules and regulations of the Ethics in Public Service Act.

Citation of Existing Rules Affected by this Order:
Amending WAC 292-110-010.

Statutory Authority for Adoption: RCW 42.52.360 (2)(b).

Adopted under notice filed as WSR 09-11-079 on May 18, 2009.

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: July 10, 2009.

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 02-07-074, filed 3/18/02, effective 4/18/02)

WAC 292-110-010 Use of state resources. (1) **Statement of principles - stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. ~~((Personal benefit or gain may include a use solely for personal convenience, or a use to avoid personal expense.))~~ Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer ~~((and))~~ or state employee, or with the state officer or state employee who authorizes such use. ~~((Employees and officials are cautioned that their own personal use of state resources should never interfere with another state official or employee, or obligate another employee to make personal use of state resources. In addition,))~~ State officers and employees

~~((have an affirmative duty to))~~ should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

(2) ~~The following are permitted uses((:))~~:

~~((a))~~ Use of state resources that is reasonably related to the conduct of official state duties ~~((does not violate RCW 42.52.160. In addition)), or which is otherwise allowed by statute.~~

~~((b))~~ An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty~~((, for example, conducting an agency combined fund campaign. Such uses shall be specifically authorized in writing and any use shall strictly conform to specific agency guidance.~~

~~((3))~~ ~~Permitted uses — under limited circumstances:~~ Extensive or repeated personal misuse of state resources, including state time, significantly undermines public trust in state government. Nevertheless, a very limited personal use of state resources that supports organizational effectiveness would not undermine public trust and confidence).

~~((c))~~ An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee. ~~((In addition, and notwithstanding the prohibition in RCW 42.52.160(1), but subject to subsection (6) of this section,))~~

~~((d))~~ A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

~~((a))~~ ~~((i))~~ There is little or no cost to the state;

~~((b))~~ ~~((ii))~~ Any use is brief ~~((in duration, occurs infrequently, and is the most effective use of time or resources;~~

~~((c))~~ The use does not interfere with the performance of the officer's or employee's official duties;

~~((d))~~ The use does not disrupt or distract from the conduct of state business due to volume or frequency;

~~((e))~~;

~~((f))~~ Any use occurs infrequently;

~~((g))~~ The use does not ~~((disrupt other state employees and does not obligate them to make a personal use of state resources))~~ interfere with the performance of any officer's or employee's official duties; and

~~((h))~~ ~~((v))~~ The use does not compromise the security or integrity of state property, information, or software.

~~((4))~~ **(3) Permitted use of computers ~~((and))~~, electronic mail, ~~((and))~~ the internet, and other technologies.** A state officer or employee may use ~~((state computers and other))~~ equipment ~~((to access computer networks or other data bases, including))~~ such as the telephone, the internet, and electronic mail provided such use conforms to ethical standards under subsection ~~((3))~~ **(2)** of this section, and the use is not otherwise prohibited under subsection ~~((6))~~ **(5)** of this section. ~~((A state officer or employee may use state computers and other equipment to access the internet only if the officer's or employee's agency has adopted a policy governing internet access that is consistent with subsections (3) and (6) of this section.~~

~~((5))~~ **(4) No expectation of privacy.** Technologies such as electronic mail, facsimile transmissions, the internet, and voice mail ~~((are technologies that))~~ may create an electronic

record. This is what separates these from other forms of communication such as a telephone conversation. ~~((Am))~~ The ethics rules do not distinguish between the various forms of communication. Electronic records ((is)) are reproducible and ((is)) therefore ((not)) cannot be considered private. Such records may be subject to disclosure under the Public ~~((disclosure law))~~ Records Act, or may be disclosed for audit or legitimate state operational or management purposes.

~~((6))~~ (5) Prohibited uses. ~~((The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources:))~~

(a) Any use for the purpose of conducting an outside business ~~((or))~~, private employment, or other activities conducted for private financial gain;

(b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to ~~((:))~~, a private business, ~~((a non-profit organization,))~~ or a political party ~~((f))~~, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee~~((;))~~;

(c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

(d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and

(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

~~((7))~~ (6) Reimbursement for personal use. Establishing a system for reimbursement for private or personal use of state resources undermines the purpose of the Ethics in Public Service Act and imposes significant administrative burdens on state agencies. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance, and must result in little or no cost to the state, including administrative costs. To be ~~((valid))~~ permitted under this ~~((rule))~~ section, the board must approve any reimbursement system implemented by an agency.

~~((8))~~ (7) Agency policies encouraged. State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this ~~((rule))~~ section is intended to limit the ability of an agency to adopt policies that are more

restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, even if it would constitute a violation of agency policy.

~~((9))~~ (8) Frequently asked questions and examples. The board maintains a list of frequently asked questions and examples that provide additional guidance regarding this ~~((rule))~~ section. State officers and employees are encouraged to review this document at the board's web site ~~((www.wa.gov/ethics))~~ www.ethics.wa.gov or to request a copy of the document through the board's office.

Washington State Executive Ethics Board

~~((2425 Bristol Court SW))~~

P.O. Box 40149

Olympia, WA 98504-0149

Or by electronic mail at: ethics@atg.wa.gov

WSR 09-16-053

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed July 29, 2009, 9:10 a.m., effective August 29, 2009]

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

Purpose: Amending WAC 181-78A-500, 181-78A-507, 181-78A-510, 181-78A-520, 181-78A-525, and 181-78A-535, rules governing the awarding of professional certification [of] the educators. The rule change provides for educational service districts [to] develop professional certification for administrator preparation programs.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-78A-500, 181-78A-507, 181-78A-510, 181-78A-520, 181-78A-525, and 181-78A-535].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-11-123 on May 20, 2009, and WSR 09-12-128 on June 3, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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 6, 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 24, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-500 Professional certificate program approval. All professional certificate programs for teachers, principals/program administrators, and school counselors, school psychologists, and school social workers shall be approved pursuant to the requirements in WAC 181-78A-520 through 181-78A-540. Only colleges/universities with professional educator standards board-approved residency certificate teacher, principals/program administrator, and school counselor, school psychologist, ~~((and))~~ school social worker preparation programs~~((:))~~, and educational service districts are eligible to apply for approval to offer ~~((teacher))~~ professional certificate programs. Educational service districts are encouraged to partner with institutions of higher education, local school districts, or consortia of school districts to provide ~~((teacher))~~ professional certificate programs.

AMENDATORY SECTION (Amending WSR 07-08-050, filed 3/28/07, effective 4/28/07)

WAC 181-78A-507 Overview—Principal/program administrator professional certificate programs. By September 1, 2007, all colleges and universities offering a professional certificate program for principals/program administrators must be in compliance with the new program standards. To obtain a professional certificate, the residency principal or assistant principal will need to complete a professional educator standards board-approved professional certificate program~~((, have satisfactory district evaluations for an administrator role,))~~ and document three contracted school years of employment as a principal or assistant principal; the residency program administrator will need to complete a professional educator standards board-approved professional certificate program ~~((and have satisfactory district evaluations for an administrator role)).~~

The professional certificate for principals/program administrators requires successful demonstration of six standards at the professional certification benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

The candidate ~~((and college or university))~~ with the approved program shall develop an individual professional growth plan that shall address the six knowledge and skills standards, focus on activities that enhance student learning, and be informed by the performance evaluation process, and an analysis of the administrative context and assignment.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-510 Responsibilities of the professional certificate administrator. Each ~~((college or university))~~ approved program shall identify a professional certi-

cate administrator who shall have the primary responsibility for the overall administration of the program.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-520 Approval standard—Professional education advisory board. The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(1).

(1) College or university.

(a) The professional education advisory board established for the preservice program in accordance with WAC 181-78A-209 shall also serve as the professional advisory board for the professional certificate program.

(b) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

(c) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

(d) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

(2) Educational service district.

(a) The educational service district electing to seek approval to offer a teacher professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program for teachers.

~~((a))~~ (i) Membership. The professional education advisory board shall consist of the following:

~~((b))~~ (A) Educational service district teacher assistance program coordinator;

~~((c))~~ (B) One college or university representative, from the educational service district region, appointed by the Washington association of colleges for teacher education;

~~((d))~~ (C) One superintendent appointed by the Washington association of school administrators from the educational service district region;

~~((e))~~ (D) One district human resource representative;

~~((f))~~ (E) One teacher with national board certification, from the educational service district region, appointed by the Washington Education Association;

~~((g))~~ (F) One teacher with professional certification, from the educational service district region, appointed by the Washington Education Association;

~~((h))~~ (G) One educational service district representative with responsibility for inservice/professional development; and

~~((i))~~ (H) One principal, from the educational service district region, appointed by the Washington Association of School Principals.

~~((b))~~ (ii) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

~~((c))~~ (iii) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

~~((d))~~ (iv) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

~~((e))~~ (v) Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:

~~((f))~~ (A) Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;

~~((g))~~ (B) A summary of the status of all candidates in the program; and

~~((h))~~ (C) A description of formal and informal partnerships with school districts or consortia of school districts.

(b) The educational service district electing to seek approval to offer an administrator professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program.

(i) Membership. The professional education advisory board shall consist of the following:

(A) One college or university representative, from the educational service district region, appointed by the Washington council of educational administration programs;

(B) One superintendent appointed by the Washington association of school administrators from the educational service district region;

(C) One district human resource representative;

(D) One teacher with national board certification, from the educational service district region, appointed by the Washington education association;

(E) One educational service district representative with responsibility for inservice/professional development; and

(F) Two principals, from the educational service district region, appointed by the Washington association of school principals.

(ii) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

(iii) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

(iv) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall imple-

ment or respond to the recommendation(s) in a timely manner.

(v) Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:

(A) Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;

(B) A summary of the status of all candidates in the program; and

(C) A description of formal and informal partnerships with school districts or consortia of school districts.

AMENDATORY SECTION (Amending WSR 07-15-053, filed 7/13/07, effective 8/13/07)

WAC 181-78A-525 Approval standard—Accountability. The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:

(1) Submit for initial approval to the professional educator standards board a performance-based professional certificate program (~~for teachers~~) which shall include the five program components specified in WAC 181-78A-535(4).

(2) Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.

(3) Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.

(4) Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully demonstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual report to the professional educator standards board as part of a less intensive evaluation cycle which will include the following:

(a) A summary of ~~((course work))~~ program requirements ~~((for the preassessment and culminating seminars))~~, linkages of the program to individual ~~((teacher))~~ professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That ~~((the))~~ subsequent to the initial program review specified in WAC 181-78A-105 on-site reviews shall be scheduled concurrently with regularly scheduled reviews of residency educator preparations offered by the university or on a five-year cycle ((unless)) for programs offered through an educational service district; provided that the professional educator standards board may approve~~((s))~~ a variation in the schedule as it deems appropriate.

~~((Provided further, That colleges and universities seeking National Council for the Accreditation of Teacher Education (NCATE) accreditation may request from the professional educator standards board approval for concurrent site visits which shall utilize the same documentation whenever possible.))~~

AMENDATORY SECTION (Amending WSR 07-19-056, filed 9/14/07, effective 10/15/07)

WAC 181-78A-535 Approval standard—Program design. The following requirements shall govern the design of the professional certificate program:

(1) **Teacher.**

(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may

enroll in and complete the preassessment seminar described in subsection (4)(a) of this section prior to admission to a professional certificate program.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be developed by a college~~((s))~~ or university and its professional education advisory board or an educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the ~~((college, university and))~~ approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 181-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.

The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 181-78A-540.

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).

The individual professional growth plan shall be based on:

(A) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.

(B) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.

(C) Specifications of assistance and instructional components needed and any required course work.

(ii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "effective teaching" as defined in WAC 181-78A-540(1).

(iii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "professional development" as defined in WAC 181-78A-540(2).

(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable

knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).

(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.

(vi) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.

(vii) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.

(2) Principal/program administrator.

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board or educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the ~~((college or university))~~ approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides evidence of professional certificate level knowledge, skill

and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

(3) Educational staff associate (ESA) - school counselor, school psychologist, school social worker.

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-

150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

(h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.

**WSR 09-16-073
PERMANENT RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-20—Filed July 30, 2009, 4:51 p.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009. Contract amendments and plan document changes to implement the changes are due no later than January 1, 2010.

Purpose: These rules amend chapter 284-51 WAC to require carriers to process and pay claims in coordination of benefits (COB) situations within clearly defined time frames, to eliminate the current estimated payment requirement for carriers that are secondary payers, and to modify the COB notice and explanatory booklet provided to covered persons to reflect the rule changes. The changes promote more timely and efficient processing of COB claims.

Citation of Existing Rules Affected by this Order: Amending WAC 284-51-195, 284-51-215, 284-51-235, and 284-51-260.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.200, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 09-10-020 on April 28, 2009.

Changes Other than Editing from Proposed to Adopted Version: A new subsection (4) was added to WAC 284-51-215 to make it clearer that the provisions of that section do not apply to COB situations where the medicare program is the primary plan; in such situations federal law governs. WAC 284-51-260 which provides notice regarding the COB process was also amended to reflect this clarification.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: July 30, 2009.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2005-07, filed 6/8/07, effective 7/9/07)

WAC 284-51-195 Definitions. As used in this chapter, these words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Allowable expense," except as outlined below means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person. When coordinating benefits, any secondary plans must pay an amount which, together with the payment made by the primary plan, totals the higher of the allowable expenses. In no event will a secondary plan be required to pay an amount in excess of its maximum benefit plus accrued savings. When medicare, Part A and Part B or Part C are primary, medicare's allowable amount is the highest allowable expense.

(a) If an issuer is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established according to Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223 (c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(c) The following are examples of expenses that are not allowable expenses:

(i) If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(ii) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement method, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(iii) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(d) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a

contract, the definition of allowable expense must include similar expenses to which COB applies.

(e) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

(f) If a secondary plan has been informed of the payment made by the primary plan but has not been informed of the amount of the primary plan's allowable expense within the period set forth in WAC 284-51-215 (2)(c), the secondary plan may use its allowable expense as the highest allowable expense.

(2) "Birthday" refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

- (a) Services (including supplies);
- (b) Payment for all or a portion of the expenses incurred;
- (c) A combination of (a) and (b) of this subsection; or
- (d) An indemnification.

(4) "Claim determination period" means calendar year.

(5) "Closed panel plan" means a plan that provides health benefits to covered persons in the form of services primarily through a panel of providers that are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

(6) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation according to federal law.

(7) "Coordination of benefits" or "COB" means a provision establishing the order that plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(8) "Custodial parent" means:

(a) The parent awarded custody of a child by a court decree; or

(b) In the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation; or

(c) In cases where a court decree awards more than half of the calendar year's residential time to one parent without the use of "custodial" terminology, the parent to whom the greater residential time is awarded.

(9) "High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(10)(a) "Hospital indemnity benefits" or "hospital fixed payment plan" means benefits not related to expenses incurred.

(b) "Hospital indemnity benefits" or "hospital fixed payment plan" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(11) "Issuer" means a disability carrier, health care service contractor, health maintenance organization, and any other entity issuing a plan as defined in this chapter.

(12) "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

(a) If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subsection.

(b) "Plan" includes:

(i) Group, individual or blanket disability insurance contracts, and group or individual contracts marketed by issuers as defined in this chapter;

(ii) Closed panel plans or other forms of group or individual coverage;

(iii) The medical care components of long-term care contracts, such as skilled nursing care; and

(iv) Medicare or other governmental benefits, as permitted by law, except as provided in (c)(vii) of this subsection. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program.

(c) "Plan" does not include:

(i) Hospital indemnity or fixed payment coverage benefits or other fixed indemnity or payment coverage;

(ii) Accident only coverage;

(iii) Specified disease or specified accident coverage;

(iv) Limited benefit health coverage, as defined in WAC 284-50-370;

(v) School accident and similar coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(vi) Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(vii) Medicare supplement policies;

(viii) A state plan under medicaid;

(ix) A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan;

(x) Automobile insurance policies required by statute to provide medical benefits;

(xi) Benefits provided as part of a direct agreement with a direct patient-provider primary care practice as defined at section 3, chapter 267, Laws of 2007.

(13) "Policyholder" means the primary insured named in a nongroup insurance policy.

(14) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan subject to this chapter is a primary plan if:

(a) The plan either has no order of benefit determination rules, or its rules differ from those permitted by this chapter; or

(b) All plans that cover the person use the order of benefit determination rules required by this chapter, and under those rules the plan determines its benefits first.

(15) "Secondary plan" means a plan that is not a primary plan.

AMENDATORY SECTION (Amending Matter No. R 2005-07, filed 6/8/07, effective 7/9/07)

WAC 284-51-215 Time limit. (1) Each issuer must establish time limits for payment of a claim and may not unreasonably delay payment through the application of a coordination of benefits provision. Time limits established by a primary plan must be no less favorable than those contained in WAC 284-43-321. Primary plans must pay ninety-five percent of clean claims subject to this chapter within thirty calendar days of receipt or of determining they are the primary plan, and must pay all clean claims subject to this chapter within sixty calendar days of receipt or of determining they are the primary plan. Any time limit established by a secondary plan that is in excess of ~~((ninety))~~ thirty days from receipt of a claim, with the primary plan's explanation of benefit information or other primary payment details needed to process the claim, will be considered unreasonable. The deadlines established in this subsection may be extended for the length of time a primary or secondary plan must wait for information needed from the provider (e.g., medical records) or from the enrollee (e.g., motor vehicle accident information), in order to adjudicate the claim.

(2) The specific time limits for coordination of benefits processing include:

(a) When an issuer has been notified that more than one plan covers an enrollee who has submitted a claim, the issuer shall resolve with the other plan in not more than thirty calendar days which plan is primary. This deadline may be extended in situations involving court orders for dependent coverage, if the court order contains information needed to determine which plan is primary and has not been provided to the issuer. If agreement cannot be reached, both plans shall pay as set forth in WAC 284-51-205 (4)(f).

(b) Once the primary plan and secondary plan have been established, if the secondary plan receives a claim without the primary plan's explanation of benefit information or other primary payment details needed to process the claim, including at least the paid amount and the allowed amount, the secondary plan will notify the submitting provider and/or enrollee as soon as possible and within thirty calendar days of receipt of the claim, that the secondary claim is incomplete without such primary plan information. The secondary plan will promptly process the claim after it has been resubmitted with the explanation of benefit information from the primary payer.

(c) If a primary plan has not adjudicated a claim within sixty calendar days of receipt of the claim and all supporting documentation, and if the primary plan is not waiting for information from the provider (e.g., medical records) or from the enrollee (e.g., motor vehicle accident information), needed to adjudicate the claim, the provider or enrollee may submit the claim and notice of the primary plan's failure to

pay to the secondary plan which shall pay the provider's claim as primary within thirty calendar days.

(3) When payment is necessarily delayed for reasons other than the application of a coordination of benefits provision, investigation of other plan coverage must be conducted concurrently to avoid delay in the ultimate payment of benefits. Any issuer that is required by the time limit in subsection (2) of this section to make payment as the primary plan ~~((because it has insufficient information to make it a secondary plan))~~ may exercise its rights under its "right of recovery" provision for recovery of any excess payments. ~~((Any issuer that is knowingly responsible for payment as the secondary plan must make a reasonable estimate of the primary plan payment and base its secondary payment on that amount.))~~ After payment information is received from the primary plan, the secondary plan may recover any excess amount paid under its "right of recovery" provision.

(4) The provisions in this section do not apply when medicare is the primary payer; in such cases federal medicare law governs.

AMENDATORY SECTION (Amending Matter No. R 2005-07, filed 6/8/07, effective 7/9/07)

WAC 284-51-235 Notice to covered persons. A plan must include the following statement in the enrollee contract or booklet provided to covered persons:

"If you are covered by more than one health benefit plan, ~~((you or your provider should file all your claims with each plan at the same time. If medicare is your primary plan, medicare may submit your claims to your secondary carrier for you.))~~ and you do not know which is your primary plan, you or your provider should contact any one of the health plans to verify which plan is primary. The health plan you contact is responsible for working with the other plan to determine which is primary and will let you know within thirty calendar days.

CAUTION: All health plans have timely claim filing requirements. If you or your provider fail to submit your claim to a secondary health plan within that plan's claim filing time limit, the plan can deny the claim. If you experience delays in the processing of your claim by the primary health plan, you or your provider will need to submit your claim to the secondary health plan within its claim filing time limit to prevent a denial of the claim.

To avoid delays in claims processing, if you are covered by more than one plan you should promptly report to your providers and plans any changes in your coverage."

AMENDATORY SECTION (Amending Matter No. R 2005-07, filed 6/8/07, effective 7/9/07)

WAC 284-51-260 Appendix B—Consumer explanatory booklet.

COORDINATION OF BENEFITS

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits issuers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. To avoid delays in claim processing, if you are covered by more than one plan you should promptly report to your providers and plans any changes in your coverage. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan is Primary

If you or a family member is covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- The claim is for your own health care expenses, unless you are covered by medicare and both you and your spouse are retired.

Your Spouse's Expenses

- The claim is for your spouse, who is covered by medicare, and you are not both retired.

- **Your child's expenses.** The claim is for the health care expenses of your child who is covered by this plan; and

- You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule"; or

- You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses; or

- There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits according to the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

When we are knowingly the secondary plan, we will make ~~((a reasonable estimate of the primary plan payment and base our payment on that amount. After payment information is received from the primary plan,))~~ payment promptly after receiving payment information from your primary plan. Your primary plan, and we as your secondary plan, may ask you and/or your provider for information in order to make payment. To expedite payment, be sure that you and/or your provider supply the information in a timely manner.

If the primary plan fails to pay within sixty calendar days of receiving all necessary information from you and your provider, you and/or your provider may submit your claim for us to make payment as if we were your primary plan. In such situations, we are required to pay claims within thirty calendar days of receiving your claim and the notice that your primary plan has not paid. This provision does not apply if medicare is the primary plan. We may recover from the primary plan any excess amount paid under the "right of recovery" provision in the plan. ((We may not delay our payments because of lack of information from the primary plan. We are required to pay claims within ninety days of receipt.))

- If there is a difference between the amounts the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and health care service contractors usually have contracts with their providers as do some other plans.

- We will determine our payment by subtracting the amount ~~((we estimate that))~~ paid by the primary plan ((with pay)) from the amount we would have paid if we had been primary. We must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal to one hundred percent of the total allowable expense (the highest of the amounts allowed under each plan involved) for your claim. We are not required to pay an amount in excess of our maximum benefit plus any accrued savings. If your provider negotiates reimbursement amounts with the plan(s) for the service provided, your provider may not bill you for any excess amounts once he/she has received payment for the highest of the negotiated amounts. When our deductible is fully credited, we will place any remaining amounts in a savings account to cover future claims which might not other-

wise have been paid. For example, if the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.

**Questions About Coordination of Benefits?
Contact Your State Insurance Department**

**WSR 09-16-079
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)**

[Filed July 31, 2009, 12:12 p.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009.

Purpose: The department is streamlining the WorkFirst exemption process.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, and 74.08A.340.

Adopted under notice filed as WSR 09-13-093 on June 16, 2009.

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

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

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

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

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

Date Adopted: July 28, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-24-057, filed 12/1/03, effective 1/1/04)

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

You are exempt from mandatory participation if you are:

(a) An older needy caretaker relative:

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

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

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

(i) The disability must be a severe and chronic mental, physical, emotional, or cognitive impairment that prevents

you from participating in work activities and is expected to last at least twelve months; or

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

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

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

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

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

(ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that significantly interferes with your ability to look for work or work.

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

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

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

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

(iv) The disability is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

(2) Who reviews and approves an exemption?

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

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

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

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

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

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

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

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

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

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

(5) How long will my exemption last?

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

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

If you are no longer exempt, then:

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

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

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

WSR 09-16-095**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 4, 2009, 7:42 a.m., effective November 15, 2009]

Effective Date of Rule: November 15, 2009.

Purpose: The purpose of this CR-103 is to change the effective date listed on the CR-103 filed as WSR 09-15-085 on July 14, 2009. The original effective date was August 14, 2009. When a CR-102 was filed on June 3, 2009, as WSR 09-12-117, only WAC 388-450-0015 was cited. The department's intent was to also include WAC 388-450-0185 in WSR 09-12-117. Because of this omission, a separate CR-102 must be filed for proposed changes to WAC 388-450-0185 that are consistent and concurrent with the changes made to WAC 388-450-0015. Due to the time required to complete the rule change process for proposed changes to WAC 388-450-0185, the department wishes to change the effective date for WSR 09-15-085 to November 15, 2009.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-450-0015.

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

Other Authority: P.L. 107-171 § 4101.

Adopted under notice filed as WSR 09-12-117 on June 3, 2009.

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

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

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

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

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

Date Adopted: August 3, 2009.

Don Goldsby, Manager
Rules and Policies Assistance Unit

WSR 09-16-098**PERMANENT RULES****CRIMINAL JUSTICE****TRAINING COMMISSION**

[Filed August 4, 2009, 10:34 a.m., effective September 4, 2009]

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

Purpose: Subsection (1)(b) cites [cites] an incorrect WAC number (WAC 139-05-202); therefore, the correct WAC number (WAC 139-03-030) is being inserted.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 09-12-046 on May 28, 2009.

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 4, 2009.

Sonja Hirsch
Rules Coordinator

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

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

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

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

(b) The in-service training requirement for each newly hired officer must begin on January 1 of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC ((139-05-205)) 139-03-030.

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

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

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

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

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

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

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

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

WSR 09-16-100
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 4, 2009, 11:11 a.m., effective September 4, 2009]

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

Purpose: The department is proposing to modify and enhance the comprehensive evaluation to improve timely engagement in WorkFirst activities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0700.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, and 74.08A.340.

Adopted under notice filed as WSR 09-13-090 on June 16, 2009.

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

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

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

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

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

Date Adopted: August 3, 2009.

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-24-023, filed 11/29/06, effective 12/30/06)

WAC 388-310-0700 WorkFirst—Comprehensive evaluation. (1) **Why do I receive a comprehensive evaluation?**

You participate in a comprehensive evaluation with your case manager and other WorkFirst staff to determine:

(a) Your employment strengths, your educational background, family situation and other factors; and

(b) Which WorkFirst activities you need to become employed.

(2) **What is the comprehensive evaluation and when will it be used?**

(a) The comprehensive evaluation is a series of questions, answers and evaluations focused on your strengths, job skills, education and other relevant elements. The results of the comprehensive evaluation are used to determine your ability to find and keep a job in your local labor market and what WorkFirst activities will help you prepare for and find work. It includes:

(i) An employability evaluation with your case manager, discussing important issues that can affect your ability to find a job, like educational background, employment history, child care, family violence or substance abuse. Your case manager will also ask you a few questions to find out if you might benefit from engaging in financial literacy activities such as money management training or any other type of credit counseling service. If so, we will tell you how to get this information(;

~~(ii) A work skills assessment to review your education, employment history, employment strengths and job skills; and~~

~~(iii) Educational and other evaluations)).~~

(b) You and your case manager and/or social worker use the information and recommendations from ~~((these evaluations))~~ the comprehensive evaluation to create or modify your individual responsibility plan, adding activities that help you become employable.

(c) After your comprehensive evaluation, you may receive more assessments to find out if you need additional services. For example, you may receive an educational skills assessment and/or evaluation after referral to an education and training activity.

WSR 09-16-107
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 4, 2009, 12:17 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The purpose of this rule making is to make amendments to the classifications in chapter 296-17A WAC. The amendments are being made to correct some grammatical or typographical errors, rearrange information for better readability, and adopt into the rules that certain classifications are in need of revision for the purposes of clarification and administration.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-0516, 296-17A-1109, 296-17A-4002, 296-17A-4910, and 296-17A-6103.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 09-12-099 on June 2, 2009.

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 5, 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 5, 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 4, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0516 Classification 0516.

0516-00 Building repair, remodeling and carpentry((~~N.O.C.~~))

This subcode applies to a firm that chooses to report all construction phases in one classification. This is to simplify recordkeeping.

Applies to contractors engaged in building repair, remodeling and carpentry work(~~((not covered by another classification (N.O.C.)))~~).

This classification applies to:

- Remodeling and carpentry-related framing work on concrete, brick and steel buildings(~~((and to))~~).
- Wood framed building renovation and remodeling projects ((where the structure)) when the skeleton framework is not being modified or altered.

Typical projects include, but are not limited to:

- Interior building demolition ("strip outs") involving only the removal of interior walls, partitions, interior trim, cabinetry, doors, flooring and related construction materials;
- Converting a room from one use to another, such as a bedroom to a study, or a garage to a family room;
- Enlarging or ~~((changing the configuration of))~~ reconfiguring a room by removing or adding an interior wall;
- Upgrading a kitchen or bathroom; (~~((or))~~)
- Adding structures such as a wooden deck to an existing building, screening a porch, installing a wood patio cover, or assembling sheet metal tool or garden sheds.

Contractors subject to this classification use a variety of dimensional lumber and wood products (~~((as well as))~~, light weight metal studs and plastic and fiber reinforced boards, metal fasteners (nails, screws and bolts), and metal reinforcing or support straps such as joist hangers and post brackets. ~~((Technological changes have produced new materials which are replacing wood and wood products. These materials include, but are not limited to, light weight metal studs and plastic and fiber reinforced boards.))~~

This classification includes ~~((the framing of private residences with light weight metal studs and the installation of earthquake tie downs on residential buildings. This classification also includes specialty service providers or contractors engaged in providing general repair services (handyman) on buildings and dwellings. Classification 0516-00 can be used for these businesses to simplify recordkeeping and reporting if they provide general carpentry work and at least two of the following types of repair work; electrical, plumbing, cabinet, interior alteration, painting, drywall, masonry, carpet/linoleum/laminate, glazing, or appliance repair.~~

~~This classification excludes roofing or roof work which is to be reported separately in classification 0507)):~~

- Framing of wood structures with light weight metal studs.
- Installation of earthquake tie downs on residential buildings.

• Specialty service providers or contractors engaged in providing general repair services or performing remodeling projects on buildings and structures.

Contractors who alter, remodel or repair existing structures and have opted to report their construction activities under this single subclassification 0516-00 are not to be assigned any other construction classification with the exception of roof work or roofing which is to be reported separately in classification 0507-05.

Special note: Businesses assigned to this classification are distinguishable from those assigned to classification 0516-02, in that 0516-02 requires each phase of construction to be reported separately in the appropriate construction classification(s).

Contractors that build **new wood structural additions** as part of a remodeling contract must also report each phase separately. They must use classification 0510-00 to report the new framing. All other phases of the construction must be reported separately in the appropriate classification(s) as noted in the text of classification 0516-02.

Contractors that build new structural additions and also repair and remodel existing structures will be assigned both 0510-00 and 0516-02 in addition to any other appropriate classification. 0516-00 will not be assigned to these employers.

Subclassifications 0516-00 and 0516-02 cannot be active on an account at the same time.

0516-01 Wood playground equipment: Installation and/or repair

Applies to contractors engaged in the installation and/or repair of wood playground equipment. Work contemplated by this classification begins after the area of land has been excavated and/or cleared and includes installing wood playground equipment at private residences and in public settings such as, but not limited to, schools, parks, day care centers, churches, and hotels. This classification usually includes a variety of playground equipment comprised of treated wood beams, poles, posts, and a variety of dimensional lumber used in building swings, forts, stationary and swinging bridges, balance beams, climbing towers, slides, and rope and tire walks. Generally, the process involves setting poles or posts with use of a post hole digger, backhoe or tractor equipped with an auger. The poles or posts may be set in concrete. Depending on the piece of equipment being built, use of beams, planks, dimensional lumber, rope, chains, tires, and metal bars or rings, are securely attached with nails, screws, bolts or eye hooks. This classification includes the building of borders surrounding the playground equipment area with beams or railroad ties and the spreading of pea gravel, sand or wood chips underneath the equipment.

This classification excludes the installation of metal playground equipment which is to be reported separately in classification 0603, and the excavation or clearing of land which is to be reported separately in classification 0101.

0516-02 Building repair, remodeling and carpentry, N.O.C.

This subcode applies to a firm that chooses to report all construction phases into separate construction classifications.

Applies to contractors engaged in building repair, remodeling and carpentry work, not covered by another classification (N.O.C.).

This classification applies to:

- Remodeling and carpentry-related framing work on the interior of concrete, brick and steel buildings.

- Wood framed building renovation and remodeling projects when the skeleton framework is not being modified or altered.

Typical projects include, but are not limited to:

- Interior building demolition ("strip outs") involving only the removal of interior walls, partitions, interior trim, cabinetry, doors, flooring and related construction materials.

- Converting a room from one use to another, such as a bedroom to a study, or a garage to a family room.

- Enlarging or reconfiguring a room by removing or adding an interior wall.

- Upgrading a kitchen or bathroom.

- Adding structures such as a wooden deck to an existing building, screening a porch, installing a wood patio cover, or assembling sheet metal tool or garden sheds.

Contractors subject to this classification use a variety of dimensional lumber and wood products, light weight metal studs and plastic and fiber reinforced boards, metal fasteners (nails, screws and bolts), and metal reinforcing or support straps such as joist hangers and post brackets.

This classification includes:

- Framing of wood structures with light weight metal studs.

- Installation of earthquake tie downs on residential buildings.

- Specialty service providers or contractors engaged in providing general repair services or performing remodeling projects on buildings and structures.

Except for interior demolition, framing and drywall which are to be reported in classification 0516-02, each phase must be reported separately in the appropriate classification noted below, but not limited to:

Concrete foundations/slabs	0217
Interior painting	0521
Counter tops	0302/0502
Metal siding/gutters	0519
Drywall	0550/0551
Plumbing	0306
Electrical	0601
Roofing new construction	0507
Roof work includes repairs to trusses, rafters, supports and sheathing	0507
Exterior painting	0504
Wood framing/sheathing/windows/nonmetal siding	0510
Floor coverings	0502
Interior finish carpentry	0513
Window installation (not part of a framing contract)	0511
Insulation	0512

Reference: WAC 296-17-31013 and 296-17-31017.

Contractors performing remodeling or alteration projects which involve **new structural additions** must report that activity in classification 0510-00 and any other applicable classification(s) noted above.

Contractors who alter, remodel or repair existing structures can choose to report all hours in classification 0516-00. This classification excludes roofing or roof work which is to be reported in 0507-05. This method can simplify recordkeeping.

Special note: Proper reporting in multiple construction classifications requires special care in maintaining required records. If these records have not been maintained as required, all worker hours for which the records were not maintained will be reassigned to the highest rated classification applicable to the work that was performed.

Reference: WAC 296-17-31013.

Averages, estimates or percentages are not allowed.

Reference: WAC 296-17-31017.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-1109 Classification 1109.

1109-00 Automobile or truck towing services, N.O.C.

Applies to establishments engaged in providing towing services for hire to others which are not covered by another classification (N.O.C.). ~~((Operations contemplated by this classification are limited to tow truck drivers and their assistants who are engaged in towing services for hire.))~~ For purposes of this classification "towing services for hire" means, but is not limited to, the towing of disabled vehicles to a shop (that is unrelated to the towing service) for repair~~((;))~~, the recovery of repossessed vehicles for others by tow truck~~((;))~~, roadside assistance during snow, ice or flooding to recover or free stuck vehicles~~((;))~~, and the towing in of disabled vehicles to a secured yard for insurance or law enforcement agencies. It is common for towing companies to also operate a vehicle repair garage or service center in conjunction with the towing service. Auto service centers and repair garages, auto body shops and wrecking yard operations are to be reported separately in the applicable service or repair classification provided that the conditions of the general reporting rules covering ~~((the operation of a secondary business and))~~ the division of worker hours have been met. Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.

Special note: Towing is common to many classifications. Employers offering towing services should be contacted to verify whether the towing service they provide is only in connection with their auto repair, auto body or wrecking yard (*towing service not for hire*), or provided as a general service unrelated to their repair garage (*towing services for hire*). Only towing services for hire are to be assigned to classification 1109. If a business provides both towing services for hire and not for hire, worker hours for drivers and their assistants may be divided between this classification and the applicable repair garage classification provided that the conditions of the general reporting rule covering the division of worker hours has been met. Otherwise, all driver and assistant hours are to be assigned to the highest rated classification applicable to the business.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4002 Classification 4002.

4002-00 Dairy products, N.O.C.: Manufacturing

To be assigned only by classification services staff

Applies to establishments engaged in the manufacture of dairy products not covered by another classification (N.O.C.) such as, but not limited to, whole, low fat, skim, powdered, flavored and condensed milk, buttermilk, cream, half-and-half, and eggnog. Raw milk may be purchased from others or furnished by the manufacturer's own dairy operation. Other

ingredients usually purchased elsewhere include, but are not limited to, flavorings, sweeteners, nutrients, bacteria and yogurt cultures, and paper, glass or plastic containers for packaging finished products. Raw milk is delivered by insulated tanker trucks after it is tested for antibiotics, bacteria and microorganism counts, temperature, and fat content. The raw milk is pumped from the trucks into refrigerated silos or tanks; the cream is skimmed from the top and pumped into separate storage tanks for further blending to ensure the correct fat and nutrient content. The remaining milk may be evaporated, homogenized, pasteurized, cooled, tested for quality, and further processed into various milk products which are filled into gallons, half gallons, quarts, pints and half-pint containers and packaged for shipping. This classification includes the incidental manufacture of butter, ice cream, or cheese products when done by employees of an employer subject to this classification.

This classification excludes establishments primarily engaged in the manufacture of butter, cheese, ice cream and ice cream mixes which are to be reported separately in classification 4002-01 and dairy farming operations which are to be reported separately in classification 7301.

4002-01 Butter, cheese, ice cream and ice cream mix: Manufacturing

To be assigned only by classification services staff

Applies to establishments engaged in the manufacture of dairy products such as, but not limited to, butter, natural or processed cheeses, cottage cheese, cheese dips or spreads, custards, whipped topping, ice cream, milkshake or ice cream mixes, ice milk, sherbet. Raw milk may be purchased from others or furnished by the manufacturer's own dairy operation. Other raw materials usually purchased elsewhere include, but are not limited to, flavoring, coloring agents, salts, additives and preservatives, plastic or oiled wrappings, and paper, glass or plastic containers for packaging finished product. Raw milk is delivered by insulated tanker trucks and pumped from the trucks into refrigerated silos or tanks. Initial processes are similar for products manufactured in this classification, but end processes vary, depending on the product being made. To make cheese, raw milk is heat treated and pasteurized, cooled, moved through separators which adjust fat composition by skimming the milk or adding cream, then pumped into vessels or cheese vats. Lactic acid and enzymes are added to purify and clot the milk and form a gel which is cut into tiny cubes. Other additives, preservatives, or flavorings may be added at this point. The mixture of curds and whey (the liquid by-product lost from curds after cutting) is heated by allowing steam to enter the outer jacket of the vat. The mixture is stirred, whey is drained from curds and transported to evaporators and spray dryers which condense the whey into a powder form. Aside from salting, little more is done to curds to make unripened cheeses such as cream cheese or cottage cheese. When making firmer cheeses, the next step involves knitting or stretching the drained curds for texture. This process will vary according to the type of cheese being produced, but activities commonly involve preliminary packing, pressing or pulling of the curds in hot water, or turning curd blocks (called "cheddaring"). The curd blocks are milled (cut into finger-sized pieces) and moved through a trough or air block through tubing to other vats for further

processing. In other processes, curds are collected in hoops (metal containers lined with cloth or plastic) and pressed into blocks or molds, or barrels. Hydraulic presses are used to press cheese, and vacuum chambers may be used to remove air. Cured cheese blocks may be packaged in corrugated cartons, or cut into smaller blocks, vacuum sealed in plastic, then packaged in boxes, or cut or shredded prior to packaging.

This classification excludes establishments primarily engaged in the manufacture of milk and other related dairy products not covered by another classification which are to be reported separately in classification 4002-00; establishments engaged in the manufacture of cheese-based salad dressings which are to be reported separately in classification 3902; and dairy farming operations which are to be reported separately in classification 7301.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4910 Classification 4910.

4910-00 Property management services

Applies to establishments engaged in managing their own (~~rental~~) property or properties owned by others. Properties include, but are not limited to, privately owned residential or commercial buildings, malls, apartment or condominium complexes, mobile home parks, halls, and conference rooms. Typical operations contemplated by this classification include, but are not limited to, management (~~or clerical~~) duties, advertising, showing vacant units to prospective tenants, collecting rent, providing security, and normal maintenance and repair when conducted by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning or janitorial activities, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the property management business. *Apartment or condominium complexes and mobile home parks* may have common areas such as, but not limited to, laundry facilities, community rooms, tennis courts, exercise rooms, swimming pools, saunas or hot tubs, and playgrounds or small park areas. Common areas are maintained by employees of the complex or park owner or by the property management service. Residents of mobile home parks are usually responsible for maintaining their own mobile homes and their immediate space.

This classification includes homeowners' associations where residents in a housing development pay annual fees which cover the maintenance of lawns, paths, sprinkler systems, and common areas such as pools, activity centers, and tennis courts by employees of the homeowners' association.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties such as collecting rents, showing and advertising the facility, conducting auctions, or in a combination of clerical

and sales duties who are to be reported separately in classification 6303; establishments providing janitorial services exclusively which are to be reported separately in classification 6602; contractors engaged in mobile home set up or removal who are to be reported separately in classification 0517; any new construction or alteration work performed by employees of employers subject to this classification which is to be reported separately in the applicable construction classification; establishments that contract to perform maintenance or repair, but have no responsibilities in the management of the property, which are to be reported separately in the applicable classification; and lodging or food serving operations which are to be reported separately in the applicable classification.

4910-01 Chimney cleaning - residential buildings

Applies to establishments engaged in providing chimney cleaning services to residential customers. Workers who perform chimney cleaning services are commonly referred to as "chimney sweeps" and usually work alone or as a two-person team. When working as a team, one "sweep" works inside the house and the other works on the roof. The methods of cleaning vary. To protect the floors and furniture, drop cloths are placed in front of the fireplace and taped over the opening. The vertical drop cloth may have a "boot" or slit in it which allows rods to be pushed through. Various brushes, usually wire, are attached to extension rods and worked up and down the flue to dislodge the soot and creosote. Creosote deposits may be removed also with a chimney bar, which is a pipe-like instrument with a chisel end, or by using metal scrapers. Where the chimney top is protected from the rain by a hood or cap, it may not be possible to insert the brushes into the opening; a chain or weight may be lowered and swung back and forth inside the chimney. Some sweeps have custom-made vacuum trucks with large collection chambers to collect the soot. In addition to cleaning the chimney flue and fireplace, some sweeps clean oil, gas and coal burning furnaces, repair chimney and flue linings, remove animals from chimneys, and offer other related services. Repairs included in this classification are limited to such activities as caulking around the flashing and sealing brickwork.

This classification excludes establishments engaged in industrial or commercial chimney or smokestack cleaning services which are to be reported separately in classification 0508; contractors engaged in chimney reconstruction or new construction made of masonry or brick who are to be reported separately in classification 0302; contractors engaged in the installation of sheet metal stove pipe who are to be reported separately in classification 0307; and the installation of a new lining in the chimney which is to be reported separately in the applicable classification.

4910-02 Mini-storage warehouse

Applies to establishments engaged in operating mini-storage facilities. Mini-storage facilities are usually fenced and entry is through a locking gate through which owners and renters of units are provided access. The units range from lockers to rooms of various sizes; once the unit is rented, the tenant or owner has sole access to it. Typical operations include, but are not limited to, management or clerical duties, renting or selling storage units to others, providing security,

and normal maintenance and repair when performed by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning of public areas, controlling rodents and other pests, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the storage facilities.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties or in a combination of clerical and sales duties who are to be reported separately in classification 6303; and new construction or alteration work which is to be reported separately in the applicable construction classification.

4910-03 Temporary signs - placement or removal

Applies to establishments engaged in placing or removing temporary yard signs such as, but not limited to, real estate signs for real estate offices or property management firms and campaign signs. The smaller signs are usually mounted on a metal rod which is pounded into the ground to a depth of about 18". A post hole digger may be used to dig holes for larger signs that require a more sturdy post.

This classification excludes all other types of sign installation, painting or repair which are to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6103 Classification 6103.

6103-01 Schools: Academic, K-12 - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, school nurses, payroll and bookkeeping personnel, and teachers or teachers' aides of establishments engaged in operating public or private academic school facilities, K-12 (kindergarten level through grade 12) and the state schools for the blind and deaf.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers' aides who are exposed to machinery hazards such as a wood shop, metal shop, print shop, auto shop, and driver training instructors who are to be reported separately in classification 6104.

6103-02 Schools: Trade or vocational - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and professors or instructors of establishments

engaged in operating trade or vocational school facilities. These types of schools provide specialized training and instruction to prepare students for occupations in the chosen fields. Often these facilities will coordinate on-the-job training with employers as well as assist students in finding employment.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, drivers, custodians, maintenance personnel and grounds keepers, and professors or instructors who are exposed to machinery hazards such as a wood shop, metal shop, print shop and auto shop who are to be reported separately in classification 6104.

6103-03 Libraries, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating library facilities not covered by another classification (N.O.C.). These types of facilities maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers who are to be reported separately in classification 6104.

6103-04 Churches - clerical office, sales personnel, teachers, N.O.C. and administrative employees Bell ringers

Applies to clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors of establishments engaged in operating church facilities for members of a religious congregation to meet and worship on a daily or weekly basis. Other services provided include, but are not limited to, sermons, rites, counseling, baptisms, weddings, funerals, bible school, and child care during church services and events. When a church is also operating a school facility, the church classifications are to be assigned for both operations. This classification also applies to bell ringers for charitable organizations.

This classification excludes all other types of employees in connection with the church facilities such as, but not limited to, custodians, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-05 Museums, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as directors, assistant directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). Museums maintain a wide variety of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packers, and warehousemen who are to be reported separately in classification 6104.

6103-06 Day nurseries or child day care centers - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, and administrative employees such as teachers, teachers' aides and nurses of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, or in providing baby-sitting services. Employees will instruct children in activities designed to promote social, physical, and intellectual growth in preparation for primary school. Most day care centers provide breakfast and lunch.

This classification excludes all other types of employees such as, but not limited to, custodians, cooks, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-10 Flight instructors - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, classroom instructors, and administrative employees of establishments engaged in providing classroom instruction to student pilots in flight procedures and techniques. Flight instructors explain various aircraft components and instruments for controlling aircraft during maneuvers, and, using flight simulators, demonstrate procedures such as, but not limited to, take-offs and landings.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers and drivers who are to be reported separately in classification 6104 and in-air flight instructors outside the classroom who are to be reported separately in the classification 6803.

Special note: Reporting rules are outlined in the division of worker hours provision in the general rules.

6103-11 Schools: N.O.C. - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to classroom instructors, clerical office, sales personnel and administrative employees such as directors and assistant directors, coordinators, instructors, receptionists, secretaries, counselors, payroll and bookkeeping personnel of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.). Schools include, but are not limited to, dance, modeling, music, driving, cooking, first aid, and schools for coaches. Modeling and dance schools emphasize poise, balance, facial gestures, self-confidence, and counseling in wardrobe and make-up. Music schools emphasize the disciplines of playing various instruments. Driving schools concentrate on the rules, principles, and coordination needed to drive safely, using textbooks, audio-visuals, and driving simulators.

This classification excludes all other types of employees in connection with the specialized school facilities such as, but not limited to, custodians, maintenance personnel,

grounds keepers, and ballet dancers and instructors who perform activities not as part of a classroom environment who are to be reported separately in classification 6104 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

6103-12 Officials for amateur athletic or cultural events, N.O.C. - clerical office, teachers, N.O.C. and administrative employees

Applies to clerical office employees, administrative employees, and event officials of establishments engaged in providing officials such as, but not limited to, umpires or referees for amateur athletic or cultural events sponsored by schools or communities. Events include, but are not limited to, sports, spelling bees, debates, and musical competitions.

6103-13 Longshore and stevedore trainees, N.O.C

Applied to clerical office employees, administrative employees, and stevedore trainees of an establishment engaged in training longshore and stevedore trainees in a classroom environment.

Special note: Any longshore or stevedore activities conducted outside of the classroom on a dock, or ship, or adjacent to navigable waters will almost always be covered by the Longshore Harbor Workers' Compensation Act (LHWCA) and will not be covered by the state fund.

WSR 09-16-108

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed August 4, 2009, 12:29 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: The federal Occupational Safety and Health Administration (OSHA) advised the department of a few areas in the lockout/tagout standard where we are not as-effective-as the federal rule. The proposed changes will make Washington state's rule as-effective-as the federal equivalent. These changes are outlined below.

WAC 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices.

OSHA Determination: "OSHA's standard requires that when a machine or equipment undergoes major repair, renovation or modification after January 2, 1990, energy isolating devices must be designed to accept a lockout device. An effective date was not included in the State standard. An effective date is necessary to enable compliance officers to determine which machines and equipment are required to be so designed."

Division of Occupational Safety and Health (DOSH) Response: Language in this section will be updated to include the January 2, 1990, effective date.

WAC 296-803-40005 Provide appropriate means to control energy.

OSHA Determination: WAC 296-803-40005 includes "Blind Flanges" as an example of means to control energy. In order to be consistent with OSHA and other WISHA stan-

dards, the term "Blind Flanges" should be changed to "blank flanges and bolted slip blinds."

DOSH Response: The term "blind flanges" will be changed to "blank flanges."

WAC 296-803-50010 Meet these requirements when applying lockout or tagout devices.

OSHA Determination: Paragraph 1910.147 (d)(2) requires orderly shutdown of machines or equipment to avoid any additional or increased hazard(s) to employees as a result of the machine or equipment stoppage. The requirement is consistent with Section 5.3.2.3 of ANSI/ASME Z244.1-2003 which requires the employer to follow a sequence of shutdown to ensure employee safety. The term "orderly shutdown" was changed to "established procedures" in the state standard without providing a rationale.

DOSH Response: Language will be added in this section to clarify that an orderly shutdown is necessary.

WAC 296-803-60015 Retrain employees when necessary.

OSHA Determination: Paragraph 1910.147 (c)(6)(i) requires the employer to conduct a *periodic inspection* of the energy control procedures. WAC 296-803-70005 requires the employer to perform and document *periodic reviews* to verify employees know and follow the energy control procedures. However, on page 11 of the comparison document, WAC 296-803-60015 requires retraining of employees when *periodic inspection* shows the employee deviates from, or has inadequate knowledge of, the energy control procedures. The state standard should be consistent when using the terms "*periodic review*" or "*periodic inspection*."

DOSH Response: The term "inspection" will be changed to "review."

WAC 296-803-800 Definitions.

Energy-isolating device.

OSHA Determination: OSHA's definition of "energy isolating device" includes the statement that push buttons, selector switches and other control circuit type devices are not energy isolating devices. This information is consistent with the American National Standard Institute (ANSI) Z244.1-2003 Annex B(1). The aforementioned information, which is necessary to clarify the intent of the standard, was not included in the state's definitions.

DOSH Response: Language will be added to this section to clarify that push buttons, selector switched [switches] and other control circuit type devices are not energy isolating devices.

Service and maintenance.

OSHA Determination: OSHA's definition of "service and/or maintenance" includes "inspecting" as a covered activity. The state's definition of the term "service and/or maintenance" does not.

DOSH Response: The term "inspecting" will be included in this definition.

Citation of Existing Rules Affected by this Order: WAC 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices, 296-803-40004 Provide appropriate means to control energy, 296-803-50010 Meet these requirements when applying lockout or tagout devices, 296-803-60015 Retrain employees when necessary, and 296-803-800 Definitions.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 09-09-115 on April 21, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 5, 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 4, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 04-15-105, filed 7/20/04, effective 11/1/04)

WAC 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices.

You must:

• Make sure energy-isolating devices designed to accept a lockout device are provided on machines and equipment that:

– Are newly installed.

OR

– Have undergone major replacement, repair, renovation, or modification after July 2, 1990.

~~((Are renovated or modified))~~

AMENDATORY SECTION (Amending WSR 04-15-105, filed 7/20/04, effective 11/1/04)

WAC 296-803-40005 Provide appropriate means to control energy.

You must:

• Provide the means necessary to isolate, secure, or block machines and equipment from energy sources.

Note: Examples of means to control energy include:

- Locks.
- Tags.
- Chains.
- Wedges.
- Key blocks.
- Adapter pins.
- Self-locking fasteners.
- ~~((Blind))~~ Blank flanges.
- Cribbing.

AMENDATORY SECTION (Amending WSR 04-15-105, filed 7/20/04, effective 11/1/04)

WAC 296-803-50010 Meet these requirements when applying lockout or tagout devices.

You must:

- Make sure, before a machine or equipment is turned off, that the authorized employee knows **all** of the following:
 - Type and magnitude of the energy.
 - Hazards of the energy to be controlled.
 - Method or means to control the energy.
- Turn off or shut down the machine or equipment using established procedures. An orderly shut down is necessary to avoid any additional or increased hazard to employees as a result of the equipment stoppage.
 - Completely isolate the machine or equipment from its energy sources using the appropriate energy-isolating devices after the machine or equipment has been turned off.
 - Make sure you or the authorized employee notify affected employees that the machine or equipment is being locked or tagged out before the devices are applied.
 - Make sure a lockout or tagout device is applied:
 - For each energy-isolating device.
 - Only by the authorized employee doing the service or maintenance.

AMENDATORY SECTION (Amending WSR 04-15-105, filed 7/20/04, effective 11/1/04)

WAC 296-803-60015 Retrain employees when necessary.

You must:

- Retrain authorized and affected employees to introduce new or revised control methods and procedures when there's a change in **any** of the following:
 - Job assignments.
 - Machines, equipment, or processes that present a new hazard.
 - Energy control procedures.
- Retrain employees to reestablish proficiency when:
 - A periodic ((~~inspection~~)) review shows the employee deviates from, or has inadequate knowledge of, the energy control procedures;

OR

- The employer has reason to believe retraining is necessary.

AMENDATORY SECTION (Amending WSR 04-15-105, filed 7/20/04, effective 11/1/04)

WAC 296-803-800 Definitions.

Affected employee. An employee who's required to operate, use, or be in the area where a machine or equipment could be locked or tagged out for service or maintenance.

Authorized employee. An employee who locks or tags out a machine or equipment to do service or maintenance.

Can be locked out. An energy-isolating device that can be locked in the "off" or "safe" position.

Employer. Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages

in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

Energized. Connected to an energy source or containing residual or stored energy.

Energy-isolating device. A mechanical device that physically prevents transmitting or releasing energy. This includes, but is not limited to:

- Manually operated electrical circuit breakers.
- Disconnect switches.
- Manually operated switches that disconnect the conductors of a circuit from all ungrounded supply conductors if no pole of the switch can be operated independently.
- Line valves.
- Blocks.
- Similar devices used to block or isolate energy.

Push buttons, selector switches and other control circuit type devices are not energy isolating devices.

Energy source. Any source of electrical, mechanical, hydraulic, pneumatic, chemical, thermal or other energy, including gravity.

Hot tap. A procedure which involves welding on pressurized pipelines, vessels, or tanks to install connections or accessories. It's commonly used to replace or add sections of pipeline used in air, gas, water, steam, and petrochemical distribution systems without interrupting service.

Lockout. Placing a lockout device on an energy-isolating device using an established procedure to make sure the machine or equipment cannot be operated until the lockout device is removed.

Lockout device. A device that uses a positive means, such as a key or combination lock, to hold an energy-isolating device in the "safe" or "off" position. This includes blank flanges and bolted slip blinds.

Normal production operations. Using a machine or equipment for its intended production function.

Primary authorized employee. An authorized employee who has overall responsibility for meeting the requirements of the lockout/tagout procedures.

Service and maintenance. Activities such as constructing, installing, setting-up, adjusting, inspecting, modifying, maintaining, and servicing machines or equipment. It also includes lubricating, cleaning, unjamming, and making tool changes.

Setting-up. Work done to prepare a machine or equipment for normal production operations.

Tagout. Placing a tagout device on an energy-isolating device using an established procedure to indicate that the energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

Tagout device. A prominent warning device, such as a tag and a means of attachment. It can be securely fastened to

an energy-isolating device to indicate that the energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

You. See definition of employer.

WSR 09-16-109
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 4, 2009, 12:58 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: The amendment to WAC 296-17-870 Evaluation of actual losses is to include reserve amounts in permanent partial disability and vocational option 2 claims' actual losses. This will ensure the losses accurately reflect benefit payments for these claims and that the rule is aligned with current practices. The amendment to WAC 296-17A-5307 State government employees, N.O.C. creates a subclassification for reporting some higher risk department of social and health services (DSHS) staff to allow tracking for actuarial analysis.

Citation of Existing Rules Affected by this Order:
 Amending WAC 296-17-870 and 296-17A-5307.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 09-12-100 on June 2, 2009.

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

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

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

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

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

Date Adopted: August 4, 2009.

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-870 Evaluation of actual losses. ~~(1) Except as provided in ((the following)) subsections ((of this paragraph, actual losses shall include all payments as of the "valuation date" for each claim arising from an accident occurring during the experience period. Losses for claims open as of the valuation date may also include a reserve for~~

~~future payments. Actual losses on claims for accidents occurring outside of the experience period shall not be included)) (3) through (12) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included. The actual losses for closed claims must include:~~

~~(a) Accident and medical aid payments; and~~

~~(b) Pension reserve amounts paid by the accident fund; and~~

~~(c) Accident and medical aid benefits or payments that are scheduled to be paid; and~~

~~(d) Reserve for other accident and medical aid benefits accessible by the worker while the claim is closed.~~

~~The actual losses for claims that are open may, in addition, also include a reserve for future payments.~~

~~((+)) (2) Valuation date.~~ The valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

~~((+)) (3) Retroactive adjustments - revision of losses between valuation dates.~~ No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

(a) In cases where loss values are included or excluded through mistake other than error of judgment.

(b) In cases where a third party recovery is made, subject to subsection ~~((+)) (5)(a)~~ of this section.

(c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.

(d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).

(e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

~~((+)) (4) Average death value.~~ Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

~~((+)) (5) Third-party recovery - effect on experience modification.~~

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department

shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) Definitions:

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

~~((5))~~ **(6) Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

~~((6))~~ **(7) Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," for the purpose of experience rating, will be the date the disability was diagnosed and that gave rise to the filing of a claim for benefits. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

~~((7))~~ **(8) Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

~~((8))~~ **(9) Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

~~((9))~~ **(10) Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism

under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

~~((10))~~ **(11) Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-010.

~~((11))~~ **(12) Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-5307 Classification 5307.

5307-00 State government employees - N.O.C.

Applies to state government employees not covered by another classification (N.O.C. - not otherwise classified). This is the basic state agency classification which covers employees who have duties that support the mission of the agency and have field or hazardous exposure. For purposes of this classification field or hazardous exposure is defined as any work which involves "hands on" work. Employees reported in this classification may have jobs that include, but are not limited to, performing manual labor or supervising a work crew performing manual labor, work in the trades, construction-type work or maintenance/repair work, operating machinery or equipment, stores/stock clerks, warehouse, supplies, deliveries, food services, facilities, recreational, or general security staff with no law enforcement duties. This classification also includes, but is not limited to, personnel such as engineers, inspectors, and biologists, who have field exposure. This classification includes supervisors who work at a field site and perform supervision duties in the field. This classification includes nonpatient care employees in state operated homes, schools, detention or correctional facilities not described in another classification.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

This classification excludes:

- Employees who have law enforcement power in any capacity, who are to be reported separately in classification 7103;

- Juvenile rehabilitation custody staff at institutions or homes who are to be reported in 5307-01;

- Administrative employees with field duties who are to be reported separately in classification 5300;

- Clerical and administrative office personnel who are to be reported separately in classification 4902;

- Employees who work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified and provide care and treatment for patients or residents who are to be reported separately in classification 7201;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported in classification 7400; ((administrative field employees, who are to be reported separately in classification 5300; and clerical and administrative office personnel, who are to be reported separately in classification 4902.))

- Volunteers are to be reported in classification 6901((;)); and

- Law enforcement volunteers in classification 6906.

((This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.))

5307-01 State government employees - juvenile rehabilitation custody

Applies to employees of the department of social and health services (DSHS) at juvenile institutions and juvenile residential community facilities. Employees in this risk classification may preserve order, provide security, and have the authority to detain, revoke privileges, or impose sanctions. Other work may include, but is not limited to, providing counseling, conducting assessments, rehabilitation, coordination of services, evaluations, and transporting detainees.

This classification excludes:

- Employees who do not have custody or security duties;

- Employees who perform parole duties such as those performed by a regional office, which are away from a juvenile institution or a juvenile residential community facility who are to be reported in 5300; and

- Employees who direct athletic and recreational activities who are to be reported in 5307-00.

See classifications 4902, 5300, 5307, 7200, 7201, and 7400 for all state government operations.

WSR 09-16-110 PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 4, 2009, 1:01 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: The purpose of this rule making is to make amendments to the reporting requirements in chapter 296-17 WAC and to the classifications in chapter 296-17A WAC. The amendments are being made to correct some grammatical or typographical errors, rearrange information for better readability, and adopt into rule the practice of classifying contractors performing portable snowblowing in classification 0308 landscaping.

Minor housekeeping changes will be made to the following reporting rules in chapter 296-17 WAC: WAC 296-17-31002 General definitions, adding definitions from 35202 to ensure all definitions are in one rule; WAC 296-17-31018 Exception classifications, adding two classifications in the list of exception classes which had inadvertently been left out of list of exceptions; WAC 296-17-35202 Definitions, repealing this rule and placing these definitions into the general definition rule; and WAC 296-17-35203 (6)(b), special reporting instructions, replaced an exclamation mark with a dash.

Minor housekeeping changes will be made to the following classifications in chapter 296-17A WAC: WAC 296-17A-0308 Landscaping, include snow blowers in description previously classed by analogy in this classification and WAC 296-17A-3603 Painting in shop NOC, change reference from WAC 296-17-675 to 296-17A-5206.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17-35202; and amending WAC 296-17-31002, 296-17-31018, 296-17-35203, 296-17A-0308, and 296-17A-3603.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Adopted under notice filed as WSR 09-12-101 on June 2, 2009.

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 5, 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 5, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 4, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of ~~((this))~~ these chapters (chapters 296-17 and 296-17A of the Washington Administrative Code(WAC)).

The following words or phrases mean:

Account: A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Account manager: An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

Example: *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

All: When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

Bone fide officer: Any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of such officer.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "excluding drivers or delivery," "excluding second hand appliance stores," or "excludes construction operations," you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

Free from direction or control: The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

Governing classification: Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The

governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.

Includes or including: When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

Example: *You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.*

Or: Refer to the definition of the word "and."

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Principal place of business: The physical location of the business from which the contract of service is directed and controlled.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Related by blood within the third degree: The degree of kinship as computed according to the rules of civil law.

Related by marriage: The union subject to legal recognition under the domestic relations laws of this state.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (Title 19

RCW) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of an "account manager."

Within a reasonable period: Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event shall last occur.

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (Title 51 RCW) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

WAC 296-17-31018 Exception classifications. (1) What are exception classifications?

In WAC 296-17-31012 we discussed our classification policy. We described the process used to classify risk and stated that we assign the basic classification or basic classifications that best describe the nature of your company's business. While this policy is modeled after the policy used by private insurance carriers and is geared to administrative ease for you, we recognize that there are some duties or operations where your employees do not share the same general workplace hazards that your other employees are exposed to. To provide for those operations that are outside the scope of a basic classification, we have created three types of exception classifications listed below:

- Standard exception classifications,
- Special exception classifications, and
- General exclusion classifications.

(2) What are the standard exception classifications?

Standard exception classifications cover those employments that are administrative in nature and common to many industries. Employees covered by a standard exception classification cannot be exposed to any operative hazard of the business. If the language of the basic classification assigned to your business does not include these employments, you may be able to report them separately. The standard exception classifications are:

- Classification 4904 (WAC 296-17A-4904) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (WAC 296-17A-6301), and 6303 (WAC 296-17A-6303) includes outside sales personnel and messengers.
- Classification 7101 (WAC 296-17A-7101) applies to corporate officers who have elected optional coverage. A corporate officer as used in these rules is a person who is an officer in the corporation, such as the presi-

dent, who also serves on the corporation's board of directors and owns stock in the corporation.

- Classification 7100 (*WAC 296-17A-7100*) applies to members of a limited liability company who have elected optional coverage.

Clerical office employees are defined as employees whose duties are limited to: Answering telephones; handling correspondence; creating or maintaining financial, employment, personnel, or payroll records; composing informational material on a computer; creating or maintaining computer software; and technical drafting. Their work must be performed in a clerical office which is restricted to:

- A work area which is physically separated by walls, partitions, or other physical barriers, from all other work areas of the employer, and
- Where only clerical office work as described in this rule is performed.

A clerical office does not include any work area where inventory is located, where products are displayed for sale, or area where the customer brings products for payment. Clerical office employees can perform cashiering and telephone sales work if they do not provide any retail or wholesale customer service that involves handling, showing, demonstrating, or delivering any product sold by the employer. Clerical office employees can make bank deposits, pick up and deliver mail at the post office, or purchase office supplies, if their primary work duties are clerical office duties as defined in this rule.

Sales personnel are defined as employees whose duties are limited to: Soliciting new customers by telephone or in person; servicing existing customer accounts; showing, selling, or explaining products or services; completing correspondence; placing orders; performing public relations duties; and estimating. Although some of sales person's duties may be performed in a clerical office, most of their work is conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "*outside sales*." Sales personnel whose duties include customer service activities such as, but not limited to, the delivery of product, stocking shelves, handling inventory, or otherwise merchandising products sold to retail or wholesale customers are excluded from all standard exception classifications. Sales personnel with duties such as delivery and stocking of shelves are to be reported in the basic classification applicable to the business unless the basic classification assigned to the business requires another treatment.

Messengers are defined as employees whose duties are delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business. Classification 6303 "messengers" does not include delivering mail or packages to the employer's customer or as a service to the public. If a messenger is engaged in delivering mail or packages as a service to the public they are to be assigned to the basic classification of the business or classification 1101 as applicable.

Corporate officers duties in classification 7101 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public rela-

tions work. To qualify for this classification, a corporate officer must:

- Be a shareholder in the corporation,
- Be elected as a corporate officer and empowered in accordance with the articles of incorporation or bylaws of the corporation,
- Serve on the corporation's board of directors,
- Not have any exposure to any operative hazard of the business, and
- Not directly supervise employees who have any exposure to any operative hazard of the business.

Members of a limited liability company (LLC) duties in classification 7100 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. This includes only those members who have duties and authority similar to the exemption criteria of corporate officers in RCW 51.12.020.

Classification 6303 may apply to a corporate officer or member of a limited liability company whose duties are limited to outside sales activities as described in the sales personnel section of this rule. Under no circumstance is classification 4904 to be assigned to any corporate officer or member of a limited liability company. You cannot divide the work hours of an employee between a standard exception classification and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to the work being performed.

(3) What are the special exception classifications?

Special exception classifications represent operations found within an employer's business that are allowed to be reported separately when certain conditions are met. Assuming the conditions noted under each exception below have been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees." These special exceptions are subject to a division of worker hours in connection with all other basic classifications unless specifically prohibited in an individual classification WAC rule.

Farms: Hand harvesting crops - classification 4806 (*WAC 296-17A-4806*) will apply if the employee:

- Is hand harvesting crops such as nuts, berries, prunes, field flowers, or bulbs, and
- Is harvesting by picking from trees while standing on the ground or harvesting from the ground while sitting, kneeling, bending, or stooping.

Security guards - classification 6601 (*WAC 296-17A-6601*) will apply if the security guard:

- Is an employee of an employer engaged in logging or construction,
- Is for the purpose of guarding the employer's logging or construction sites,
- Is employed at the site only during the hours the employer is not conducting any other operations at the site,

- Has no other duties during their work shift as a security guard.

If all of the above conditions are not met, the security guard is to be reported in the basic classification applicable to the construction or logging operation being conducted.

Janitors - classification 6602 (*WAC 296-17A-6602*) will apply if:

- The janitorial/cleaning activities being performed are limited to the employer's clerical office,
- The clerical office meets the criteria described earlier in this rule, and
- The employer's office employment is assigned to be reported in classification 4904.

Construction: Superintendent or project manager - classification 4900 (*WAC 296-17A-4900*) will apply if the superintendent or project manager:

- Is an employee of a licensed contractor engaged in construction,
- Has no direct control over work crews,
- Performs no construction labor at the construction site or project location.

If all of the conditions are not met, the superintendent or project manager is to be reported in the basic classification applicable to the construction project.

Construction: Estimator - classification 4911 (*WAC 296-17A-4911*) will apply if the estimator:

- Is the employee of a licensed contractor engaged in construction, and
- Has no duties other than estimating during their work shift.

If these conditions are not met, the estimator is to be reported in the basic classification applicable to their employer's business or the construction project.

Permanent yard or shop operations - classification 5206 (*WAC 296-17A-5206*) will apply if:

- The permanent yard or shop is maintained exclusively for the storage and maintenance of materials or equipment used in the business of logging, log hauling, construction, or trucking.

Log truck drivers - classification 5003 (*WAC 296-17A-5003*) will apply if the log truck driver has no other duties during their work shift that are subject to the logging classification 5001 (*WAC 296-17A-5001*).

(4) What are the general exclusion classifications?

General exclusion classifications represent operations that are so exceptional or unusual that they are excluded from the scope of all basic classifications. If you have these operations, we will assign a separate classification to cover them. You must keep accurate records of the work hours your employees work in these classifications. If you do not keep accurate time records for each employee performing work covered by a general exclusion classification, we will assign the work hours in question to the highest rated classification applicable to those hours. The general exclusion classifications are:

- Aircraft operations: All operations of the flying crew.
- Racing operations: All operations of the drivers and pit crews.

- Diving operations: All operations of diving personnel and ship tenders who assist in diving operations.
- New construction or alterations of the business premises.
- Musicians and entertainers.

A division of work time is permitted between a standard exception classification and flight crew operations, racing operations, or diving operations. If you fail to keep original time records that clearly show the time spent in the office or in sales work, we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

Example: Assume a corporate officer performs duties which are described in classification 7101. Occasionally, the officer flies a plane to attend a meeting. You would report the flying exposure (hours) of the corporate officer in classification 6803. The remainder of the corporate officer's time would continue to be reported in classification 7101.

AMENDATORY SECTION (Amending WSR 08-20-133, filed 10/1/08, effective 11/1/08)

WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams. Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(6).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

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

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

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

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

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

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

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours

worked does not include time spent during lunch or rest periods or overnight lodging.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land

services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.-030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

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

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

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

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

(i) The name of each worker;

(ii) The Social Security number of each worker;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

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

(e) Reporting requirements and premium payments.

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

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

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

(III) The total contract award.

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

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

(VI) Number of acres covered by the contract.

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

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

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

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

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

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

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll,

employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

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

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

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

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

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

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

(5) Logging and/or tree thinning—Mechanized operations—Industry rule. The following subsection shall

apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

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

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

(6) Special drywall industry rule.

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

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

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

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

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

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

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

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

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

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by

subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

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

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

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

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

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

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

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

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

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

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

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

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

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

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

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

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

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

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

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

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

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

tenets of any well-recognized church or religious denominations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance eval-

uation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

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

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

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

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

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

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

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

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

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

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

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

(b) **Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state?** A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, it will not need to pay premiums in Washington for work in

the other state during the calendar year, as long as it fulfills the following requirements:

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

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

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

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

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

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

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

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

(e) What records must the employer keep while employing Washington workers in another state? In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washing-

ton. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

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

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

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

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

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

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

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

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

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

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-35202 Definitions.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0308 Classification 0308.

0308-00 Chemical spraying and fumigating

Applies to establishments engaged in providing chemical spraying and fumigating services only to established residential landscaping and commercial properties. Work contemplated by this classification includes, but is not limited to, the application of various liquid and granular chemicals (fertilizers, herbicides, pesticides, insecticides, iron, nitrogen, slow release food stakes) for use on grass, plants, shrubs, flowers, trees, moss, ivy or weeds. Employees of establishments subject to this classification arrive at the location site in a tank truck equipped with a premixed solution that is dispensed with a spray hose, or by fertilizer spreaders, injection guns, and back pack dispensers.

This classification excludes chemical spraying of roadway median strips by nonmunicipal employees adjacent to state, city or town roadways which is to be reported separately in classification 0101; chemical spraying done in connection with forest roads or reforestation projects which is to be reported in the applicable forestry classification; pest and termite control which is to be reported separately in classification 6602; chemical spraying and fumigating by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; chemical spraying of agricultural farms or orchards which *may* be reported separately in classification 4808 or in the agricultural classification applicable to the employer's operation; and crop dusting by aircraft which is to be reported separately in classification 6903.

0308-01 Lawn care maintenance

Applies to contractors engaged in maintenance of established lawns and gardens. Work contemplated by this classification includes, but is not limited to, mowing and thatching lawns, edging, weeding flower beds, raking, rototilling gardens, application of fertilizers, and spraying and trimming of shrubs. Also included is minor landscape renovation and/or restoration activities incidental to, and performed as part of, the lawn care maintenance contract for an existing lawn or landscape such as the removal and replacement of plants, turf repair or reseeding of grass, and the spreading of decorative rock, topsoil, or bark. This classification includes replacement of sprinkler heads and cleaning of lawn type sprinkler systems only when performed in connection with and incidental to the lawn care maintenance contract. Contractors who provide snow blowing and snow removal services using hand-held or push-propelled equipment are included in this classification. Equipment used by contractors subject to this classification includes, but is not limited to, riding or power lawn mowers, power sweepers, edgers, thatchers, weed eat-

ers, grass blowers, fertilizer spreaders, sprayers, gas or electric power tools, and hand tools.

This classification excludes new landscape construction which is to be reported separately in classification 0301; tree care and pruning services which are to be reported separately in classification 0101; grading, clearing, or contouring of land which is to be reported separately in classification 0101; installation, service or repair of lawn type sprinkler systems which is to be reported separately in classification 0301; and the installation, service or repair of above or below ground agricultural irrigation systems which is to be reported separately in classification 0301.

Special notes: Classifications 0308 and 0301 may be assigned to the same business provided that the conditions of the general reporting rule covering the operation of a secondary business have been met.

Care should be exercised in the assignment of this classification when tree services are included. Tree care service contracts generally call for the radical topping, pruning or cutting of tree limbs to remove or eliminate a hazard to buildings, property, or power lines. Tree trimming as part of this classification is only for the purpose of shaping and maintaining healthy trees and to control size for the visual relationship to other landscape material.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3603 Classification 3603.

3603-10 Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.

Applies to establishments engaged in stripping and refinishing wood or metal furniture, or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.). Furniture refinishing contemplated by this classification includes, but is not limited to, preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt, sanding and wire brushing as needed, thoroughly removing all residues, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. *Metal plating* contemplated by this classification may be done by dipping in hot solution or spraying with a very high pressure, heated gun. *Electroless plating* is another type of dipping process which can be used to plate metals, plastics, and other materials by first preparing the surface with a chemical to ensure adhesion of the metal plating material. *Rustproofing*, as contemplated by this classification, is usually applied by dipping or spraying. Plated items may be finished by lacquering and polishing. *Polishing* may also be conducted as a separate contract on metal and nonmetal items.

This classification excludes furniture finishing/refinishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal product which is to be reported separately as applicable to the product; undercoating

of automobiles or other vehicles which is to be reported separately in classification 3411; metal plating done by an *electrolytic method* and rustproofing by *anodizing method* which are to be reported separately in classification 3603-11.

3603-11 Electroplating and detinning, N.O.C.

Applies to establishments engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, preparing items by dipping in chemical solution/acid baths to remove old finish or dirt, sanding and wire brushing as needed, removing all residues thoroughly, electroplating to create the new finish, air or oven drying, any appropriate finish work such as polishing and buffing, and electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. *Electroplating* (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the solution which causes the metal particles to adhere to the object being plated. Typical items plated include, but are not limited to, jewelry, plumbing hardware and components, silverware, eyeglass frames, medical instruments, and various specialized industrial components of any size. Plated items may be polished and lacquered as part of the finishing process. This classification includes *anodizing* to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it. *Detinning* is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

This classification excludes any electroplating or rustproofing by electrolytic methods done in conjunction with the manufacturing of metal or a metal product which is to be reported separately as applicable to the product; metal plating, polishing or rustproofing not using electrolytic methods which is to be reported separately in classification 3603-10; galvanizing or tinning done by hot dip process which is to be reported separately in classification 3604; and any detinning not done by a specialty shop as described above.

3603-12 Painting in shop, N.O.C.

Applies to establishments engaged in providing painting services at their shop, that are not covered by another classification (N.O.C.). This includes painting wood, metal, plastic, glass or other items. Customers include manufacturers, cabinetmakers or millwork manufacturers who do not do their own finish painting/staining/varnishing, or individuals who need only one item painted. Work contemplated by this classification includes, but is not limited to, preparing items for finishing by cleaning, sanding and wire brushing as needed, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employ-

ees of an employer having operations subject to this classification. This classification includes application of nonmetallic coatings by dipping (such as nonstick surfaces) and painting with an electrostatic paint gun.

This classification excludes *sign painting* when done by establishments who do not manufacture the sign, which is to be reported separately in classification 4109; any painting done in conjunction with the manufacture of a sign which is to be reported separately in classification 2903, 3402, 3503 or 3510 as applicable; painting done in conjunction with the repair of an exterior sign which is to be reported separately in classification 0403; furniture stripping and refinishing services which are to be reported in classification 3603-10; furniture finishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; automobile painting which is to be reported separately in classification 3412; the permanent yard or shop of a painting contractor which is to be reported separately in classification 5206 provided the conditions set forth in WAC ((296-17-675)) 296-17A-5206 have been met; and the painting/staining/varnishing of any item done in conjunction with the manufacturing of that item which is to be reported separately as applicable to the product.

WSR 09-16-120

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 4, 2009, 2:49 p.m., effective August 15, 2009]

Effective Date of Rule: August 15, 2009. These rules implement 2009 legislation that is effective July 26, 2009, and are necessary for public health and to improve access to care.

Purpose: The adopted rules implement SHB 1765 (chapter 98, Laws of 2009) that increases the annual impaired provider surcharge fee for physicians and physician assistants. The rules also implement 2SHB 1899 (chapter 403, Laws of 2009) that exempts licensed retired active physicians who reside and practice in Washington from all fees except the impaired physician program surcharge. In addition, the rules correct a statute citation and change the renewal fee for retired active physicians to match the active physician renewal cycle.

Citation of Existing Rules Affected by this Order: Amending WAC 246-918-990 and 246-919-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Other Authority: RCW 18.31.310, 18.71A.020, 18.71.-080, 43.70.110.

Adopted under notice filed as WSR 09-13-088 on June 16, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: August 4, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants((certified physician assistants, physician assistant surgical assistants, acupuncture physician assistants)):	
Application <u>(annual)*</u>	((50.00)) <u>\$125.00</u>
Two-year renewal*	((70.00)) <u>220.00</u>
Expired license reissuance	50.00
Duplicate license	15.00
((Impaired physician program surcharge- *(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW 18.71.310(2))	-35.00
UW library fee	<u>25.00))</u>

*Includes: The application or renewal fee, the Washington physician health program surcharge (RCW 18.71A.-020(3)) assessed at \$50.00 per year, and the fee to access the University of Washington (UW) HEAL-WA web site (RCW 43.70.110) assessed at \$25.00 per year.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years

on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses ((and retired active physician licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment)).

(2) Postgraduate training limited licenses must be renewed every year to correspond to the program's date. ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(3) A retired active physician ((licenses shall be renewed every year. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment)) who resides and practices in Washington and obtains or renews a retired active license is exempt from all licensing fees except for the impaired physician program surcharge authorized by RCW 18.71.310.

(4) The applicants and licensees must pay the following nonrefundable fees:

Title of Fee	Fee
Physicians and surgeons: Chapter 18.71 RCW	
Application (<u>annual</u>)*	((\$425.00)) <u>\$500.00</u>
((Retired active physician license renewal*	100.00
Retired active late renewal penalty	50.00))
Two-year renewal*	((\$25.00)) <u>675.00</u>
Late renewal penalty	262.50
Expired license reissuance	262.50
Certification of license	50.00
Duplicate license	15.00
Temporary permit	50.00
Application fee for transitioning from a postgraduate training limited license (<u>annual</u>)*	((100.00)) <u>175.00</u>

Title of Fee	Fee
<u>Retired active physicians and surgeons:</u>	
<u>(Two-year cycle)</u>	
Retired active physician who resides and practices in-state per RCW 18.71.080 and 18.130.250 (Washington physician health program surcharge)	<u>100.00</u>
Retired active physician license renewal*(does not meet in-state exemption)	<u>350.00</u>
Retired active late renewal penalty	<u>50.00</u>
Postgraduate limited license fees: RCW 18.71.095	
<u>(One-year cycle)</u>	
Limited license application*	((325.00)) <u>400.00</u>
Limited license renewal*	((325.00)) <u>400.00</u>
Limited duplicate license	15.00
((Impaired physician program *(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW 18.71.310(2))	35.00
UW library fee	25.00))

*Includes: The application or renewal fee, the Washington physician health program surcharge (RCW 18.71.310(2)) assessed at \$50.00 per year, and the fee to access the University of Washington (UW) HEAL-WA web site (RCW 43.70.110) assessed at \$25.00 per year.

**WSR 09-16-125
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-109—Filed August 4, 2009, 4:43 p.m., effective September 4, 2009]

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

Purpose: Amend rules for commercial salmon fishing in Grays Harbor and Willapa Bay, including WAC 220-36-023 and 220-40-027.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023 and 220-40-027.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 09-09-125 on April 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 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 4, 2009.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

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

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon according to the chart below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. ((October 11)) <u>September 3</u> through 6:00 p.m. ((October 12, 2008)) <u>September 4, 2009;</u> ((AND))	Area 2C
6:00 p.m. ((October 15)) <u>September 8</u> through 6:00 p.m. ((October 16, 2008.	
7:00 a.m. October 8 through 7:00 p.m. October 8, 2008; 7:00 a.m. October 9 through 7:00 p.m. October 9, 2008; 7:00 a.m. October 10 through 7:00 p.m. October 10, 2008.)) <u>September 9, 2009;</u> <u>6:00 a.m. September 13 through 6:00 p.m. September 14, 2009;</u> <u>6:00 a.m. September 20 through 6:00 p.m. September 21, 2009;</u> <u>AND</u> <u>6:00 p.m. September 29 through 6:00 p.m. September 30, 2009.</u>	((That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore. AND That portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.))

Gear

(2) Gill net gear restrictions: All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is legal to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) ~~((6-inch maximum mesh restriction, and nets may be no more than 55 meshes deep.))~~ Nine-inch maximum mesh size allowed.

(c) Entire nets must be single mesh size. Only one net may be fished at a time; other nets must be properly stored.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

~~((d))~~ (e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Area ~~((2A/2D on October 8, 9, and 10, 2008))~~ 2C. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

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

~~((e))~~ (f) All ~~((Chinook))~~ wild coho, nonlegal sturgeon, and steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box.

~~((f))~~ (g) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

~~((g))~~ (h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to ~~((10:00 a.m.)) 5:00 p.m.~~ on ~~((October 6)) August 28, 2009,~~ for the ~~((October 8-10))~~ openings in Area ~~((s 2A/2D)) 2C.~~

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited ~~((;))~~ to protect this federally listed stock.

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon as shown below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 p.m. September 15 through 6:00 p.m. September ((17, 2008)) <u>19, 2009.</u>	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.
6:00 p.m. September ((21)) <u>22</u> through 6:00 p.m. September ((22, 2008)) <u>23, 2009;</u> AND 6:00 p.m. September 28 through 6:00 p.m. September 29, ((2008)) <u>2009.</u>	Area 2K
6:00 p.m. September ((21)) <u>22</u> through 6:00 p.m. ((September 26, 2008. AND 6:00 p.m. September 28 through 6:00 p.m.)) October ((5, 2008)) <u>7, 2009.</u>	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the

Time:

6:00 p.m. October ~~((7))~~ 10 through 6:00 p.m. October ~~((10, 2008;~~
AND
~~6:00 p.m. October 12 through 6:00 p.m. October 14, 2008))~~ 14, 2009.

~~((Noon,))~~ 6:00 p.m. November ~~((6))~~ 10, through 6:00 p.m. November ~~((14, 2008))~~ 19, 2009.

~~((6:00 p.m.))~~ Noon, November ~~((14, 2008))~~ 6, 2009, through noon, November 30, ~~((2008))~~ 2009.

Area:

North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of the Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.

Areas 2G, 2H, 2J, and 2M.

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gear

(3) Gill net gear restrictions - All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It will be legal to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery and the length of any one net does not exceed one thousand five hundred feet in length.

(b) September 1 through ~~((October 5, 2008))~~ September 21, 2009: Six-inch maximum mesh, and net may be no more than fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure ~~((break-away))~~ breakaway panels.

(c) ~~((October 7))~~ September 22 through October 31, ~~((2008))~~ 2009: Six and one-half inch maximum mesh.

(d) November 6 through November 30, ~~((2008))~~ 2009: Nine-inch minimum mesh; except from 6:00 p.m. November

10 through 6:00 p.m. November ~~((14, 2008))~~ 19, 2009 (coho directed), there are two alternatives:

(i) Use six-inch maximum mesh; and net may be no more than fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure break-away panels; or

(ii) Use nine-inch minimum mesh.

(iii) Only one net of either six-inch or nine-inch configuration, not exceeding fifteen hundred feet, may be ~~((on-board the vessel))~~ used when in the act of fishing.

Other

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited~~((;))~~ to protect this federally listed stock.

WSR 09-16-128

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-25—Filed August 5, 2009, 9:12 a.m., effective September 5, 2009]

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

Purpose: These new rules inform and clarify for health and disability carriers that the Washington insurance code prohibits the use of a discretionary clause. This is consistent with the NAIC endorsement of the prohibition of discretionary clauses as well as similar prohibition adopted by other state insurance regulators.

Statutory Authority for Adoption: RCW 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.200, and 48.02.060.

Other Authority: RCW 48.18.110, 48.44.020, and 48.46.060.

Adopted under notice filed as WSR 09-07-030 on March 10, 2009.

A final cost-benefit analysis is available by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7040, fax (360) 586-3109, e-mail DonnaD@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, 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 4, Amended 0, Repealed 0.

Date Adopted: August 5, 2009.

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-44-015 Discretionary clauses prohibited.

(1) No contract may contain a discretionary clause. "Discretionary clause" means a provision that purports to reserve discretion to a carrier, its agents, officers, employees, or designees in interpreting the terms of a contract or deciding eligibility for benefits, or requires deference to such interpretations or decisions, including a provision that provides for any of the following results:

(a) That the carrier's interpretation of the terms of the contract is binding;

(b) That the carrier's decision regarding eligibility or continued receipt of benefits is binding;

(c) That the carrier's decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding;

(d) That there is no appeal or judicial remedy from a denial of a claim;

(e) That deference must be given to the carrier's interpretation of the contract or claim decision; and

(f) That the standard of review of a carrier's interpretation of the contract or claim decision is other than a de novo review.

(2) Nothing in this section prohibits a carrier from including a provision in a contract that informs an insured that as part of its routine operations the carrier applies the terms of its contracts for making decisions, including making determination regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes.

NEW SECTION

WAC 284-46-015 Discretionary clauses prohibited.

(1) No contract may contain a discretionary clause. "Discretionary clause" means a provision that purports to reserve discretion to a health maintenance organization, its agents, officers, employees, or designees in interpreting the terms of a contract or deciding eligibility for benefits, or requires deference to such interpretations or decisions, including a provision that provides for any of the following results:

(a) That the carrier's interpretation of the terms of the contract is binding;

(b) That the carrier's decision regarding eligibility or continued receipt of benefits is binding;

(c) That the carrier's decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding;

(d) That there is no appeal or judicial remedy from a denial of a claim;

(e) That deference must be given to the carrier's interpretation of the contract or claim decision; and

(f) That the standard of review of a carrier's interpretation of the contract or claim decision is other than a de novo review.

(2) Nothing in this section prohibits a carrier from including a provision in a contract that informs an insured that as part of its routine operations the carrier applies the terms of its contracts for making decisions, including making determination regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes.

NEW SECTION

WAC 284-50-321 Discretionary clauses prohibited.

(1) No disability insurance policy may contain a discretionary clause. "Discretionary clause" means a provision that purports to reserve discretion to an insurer, its agents, officers, employees, or designees in interpreting the terms of a policy or deciding eligibility for benefits, or requires deference to such interpretations or decisions, including a provision that provides for any of the following results:

(a) That the insurer's interpretation of the terms of the policy is binding;

(b) That the insurer's decision regarding eligibility or continued receipt of benefits is binding;

(c) That the insurer's decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding;

(d) That there is no appeal or judicial remedy from a denial of a claim;

(e) That deference must be given to the insurer's interpretation of the contract or claim decision; and

(f) That the standard of review of an insurer's interpretation of the policy or claim decision is other than a de novo review.

(2) Nothing in this section prohibits an insurer from including a provision in a policy that informs an insured that as part of its routine operations the insurer applies the terms of its policies for making decisions, including making determination regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes.

NEW SECTION

WAC 284-96-012 Discretionary clauses prohibited.

(1) No disability insurance policy may contain a discretionary clause. "Discretionary clause" means a provision that purports to reserve discretion to an insurer, its agents, officers, employees, or designees in interpreting the terms of a policy or deciding eligibility for benefits, or requires deference to such interpretations or decisions, including a provision that provides for any of the following results:

(a) That the insurer's interpretation of the terms of the policy is binding;

(b) That the insurer's decision regarding eligibility or continued receipt of benefits is binding;

(c) That the insurer's decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding;

(d) That there is no appeal or judicial remedy from a denial of a claim;

(e) That deference must be given to the insurer's interpretation of the contract or claim decision; and

(f) That the standard of review of an insurer's interpretation of the policy or claim decision is other than a de novo review.

(2) Nothing in this section prohibits an insurer from including a provision in a policy that informs an insured that as part of its routine operations the insurer applies the terms of its policies for making decisions, including making determination regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes.

WSR 09-16-135

PERMANENT RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed August 5, 2009, 9:39 a.m.]

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

Purpose: The requirement to obtain basic corrections officer training through the Washington state criminal justice training commission (WSCJTC) does not apply to department of corrections (DOC) employees who work for the prisons division. The DOC is responsible for identifying training standards, designing training programs, and providing training for those employees. The secretary of the DOC must consult with experts and corrections professionals and solicit input from labor organizations in designing its training requirements.

The WSCJTC and the DOC share the responsibility of developing and defining training standards and providing training for community corrections officers employed within the community corrections division of the DOC.

Citation of Existing Rules Affected by this Order: Repealing 2 [WAC 139-10-236 and 139-10-540]; and amending 1 [WAC 139-10-210].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 09-12-079 on June 1, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 2.

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

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

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

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 5, 2009.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-027, filed 9/28/05, effective 10/29/05)

WAC 139-10-210 Requirement of basic corrections training. As provided in RCW 43.101.220, all full-time corrections employees ~~((of))~~ in the state of Washington with the exception of the Washington state department of corrections prison division or of any city, county, or political subdivision of the state of Washington must, as a condition of continued employment, successfully complete a basic corrections academy as prescribed, sponsored, or conducted by the commission. The commission and the department of corrections share the responsibility of developing and defining training standards and providing training for community corrections officers employed within the community corrections division of the department of corrections. This requirement to complete basic training must be fulfilled within the initial six months of corrections employment unless otherwise extended or waived by the commission. Requests for extension or waiver of the basic training requirement must be submitted to the commission in writing as designated by its policies.

(1) Corrections personnel must attend basic academy training according to job function as described below:

(a) Corrections officers academy. All employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails ~~((penal institutions,))~~ and detention facilities. Representative job classifications include, but are not limited to, custody and corrections officers.

(b) Misdemeanant probation/classification academy. All employees whose primary job function is the case management of offenders under county/city supervision, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to ~~((adult probation officers((jail classification counselors, and work crew supervisors))~~)).

(c) Community corrections officers academy and basic arrest, search, and seizure academy. All employees whose primary job function is the case management in the community of adult offenders under state department of corrections supervision, to include: Monitoring adjustment of offenders involved with in/outpatient treatment programs, counseling offenders and/or referring them for counseling or other resource/treatment programs, and making home/field visits pursuant to offender classification standards. Representative job classifications include, but are not limited to, community corrections officers, community risk management specialists, hearings officers, and victim advocates.

~~(((d) Institutional corrections counselors academy. All employees whose primary job function is to provide classification and program services to adult felony offenders housed in a state institutional setting: Parole planning, work/training release and prerelease referrals, academic/vocational/work~~

~~program reviews, disciplinary and living unit program reviews, and risk management identification. Representative job classes include, but are not limited to, corrections counselors, classification counselors, institution risk management specialists, and corrections mental health counselors.~~

~~((e))~~ (d) Juvenile services academy. All employees working with juveniles whose primary job function is the case management of offenders, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, juvenile probation ~~((and parole))~~ counselors, case aides/assistants, trackers, ~~((juvenile rehabilitation community counselors,))~~ juvenile drug court counselors, and community surveillance officers.

~~(((f))~~ (e) Juvenile corrections officers academy. All employees responsible for the care, custody, and safety of youth in county ~~((and state juvenile custody))~~ facilities. Representative job ~~((class))~~ classes include ~~((s))~~, but are not limited to, juvenile detention workers, juvenile corrections officers, and juvenile supervision officers.

~~(((g))~~ (f) Juvenile residential counselors academy. All employees responsible for the case management, custody, safety, counseling, supervision, and application of researched based treatment ~~((to youth in state institutions))~~ interventions to youth committed to the care and supervision of the juvenile rehabilitation administration. Representative job classes include, but are not limited to, juvenile residential rehabilitation counselors, juvenile rehabilitation community counselors, juvenile ~~((residential))~~ rehabilitation counselor assistants, juvenile rehabilitation security officers, juvenile rehabilitation coordinators, and juvenile rehabilitation supervisors.

~~(((h) Work release academy. All employees responsible for the safety, custody, and care of adult offenders in a work release facility. Representative job classes include, but are not limited to, work release officers, work release counselors, and work release program monitors.))~~

(2) It is the responsibility of the employing agency to determine the most appropriate basic academy for an employee to attend within the guidelines set by the commission.

An agency may elect to decline basic academy training if such employee occupies a middle management or an executive position, as defined in WAC 139-10-410, 139-10-510, and 139-25-110.

(3) Failure to comply with the above requirements will result in a notification of noncompliance from the commission directed to the individual employee and, as appropriate, the employing agency director, chief or sheriff, the chief executive of the local unit of government, and any other agency or individual determined by the commission.

(4) Each agency employing personnel covered by RCW 43.101.220 is responsible for full and complete compliance with the above training requirements. Additionally, each such agency must provide the commission with employment information necessary for the establishment and maintenance of complete and accurate training records on all affected employees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-10-236	Work release academy curriculum.
WAC 139-10-540	Basic institutional corrections counselor academy curriculum.

WSR 09-16-144**PERMANENT RULES****SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 5, 2009, 11:47 a.m., effective September 5, 2009]

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

Purpose: The revised rule changes procedures for securing parental consent as a condition for administering certain student surveys. The revision creates a unified procedure for administering student surveys.

Citation of Existing Rules Affected by this Order: Amending WAC 392-500-030.

Statutory Authority for Adoption: RCW 28A.150.070 and 28A.150.290.

Adopted under notice filed as WSR 09-13-070 on June 16, 2009.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 24, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-500-030 Pupil tests and records—Certain tests, questionnaires, etc.—Limitations. No written or oral test, questionnaire, survey, or examination shall be used to elicit the personal beliefs or practices of a student or his parents as to ((sex or)) religion except with the written consent of parent or guardian.