

WSR 05-18-033
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 30, 2005, 3:52 p.m., effective October 1, 2005]

Effective Date of Rule: October 1, 2005.

Purpose: The rule incorporates language from contracts with hospice care centers (HCCs) into chapter 388-551 WAC, Hospice services; clarifies and updates hospice services definitions and rules; provides a standard for medically appropriate and fiscally responsible utilization; allows stabilization of reimbursement payments for hospice services provided to medical assistance clients; adopts rules to incorporate into rule language for the pediatric palliative care (PPC) case management/coordination services program; and repeals outdated sections in chapter 388-551 WAC regarding election periods and notification requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-551-1315 and 388-551-1410; and amending WAC 388-551-1000, 388-551-1010, 388-551-1200, 388-551-1210, 388-551-1300, 388-551-1310, 388-551-1320, 388-551-1330, 388-551-1340, 388-551-1350, 388-551-1360, 388-551-1400, 388-551-1500, 388-551-1510, 388-551-1520, and 388-551-1530.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 05-15-148, 05-15-149, and 05-15-150 on July 19, 2005.

Changes Other than Editing from Proposed to Adopted Version:

WAC 388-551-1010 Hospice program—Definitions.

~~"Legal representative" means an individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.~~

WAC 388-551-1200 Client eligibility for hospice care.

~~(5)(d) If the client is a Medicaid only client (i.e., not a Medicaid-Medicare dual eligible client) and has a diagnosis other than cancer, the client's initial assessment has been reviewed and approved by the department (see WAC 388-551-1320).~~

~~(5)(e)(d) The hospice agency...~~

WAC 388-551-1310 Hospice election periods, election statements, and the hospice certification process.

~~(3)(a) At the time When a client elects to receive hospice care, the department requires a hospice agency to:~~

WAC 388-551-1320 Hospice plan of care.

~~(1) ...as described in WAC 246-335-985085, and meet the requirements in this section.~~

WAC 388-551-1810 Pediatric palliative care (PPC) case management/coordination services—Client eligibility.

~~(3) Have a life-limiting medical condition that requires case management and coordination of medical services due to at least three of the following circumstances.—The client must:~~

~~(a) Have An immediate medical needs during a time of crisis;~~

~~(b) Require eCoordination with family member(s) and providers required in more than one setting (i.e. school, home, and multiple medical offices or clinics);~~

~~(c) Have a life-limiting medical condition...;~~

~~(d) Have a medical condition ~~that~~ with which the family is unable to cope ~~with~~;~~

~~(e) Have a family member(s) and/or caregiver who ~~lacks~~ needs additional knowledge or assistance ~~regarding~~ with the client's medical needs; and~~

~~(f) Have tTherapeutic goals that are focused on quality of life, comfort, and family stability.~~

WAC 388-551-1820 Pediatric palliative care (PPC) contact—Services included and limitations to coverage.

~~(2)(a) One visit with a registered nurse, social worker, or therapist (for the purpose of this section, the department defines therapist as a licensed physical therapist, occupational therapist, or speech/language therapist) with the client in the client's residence to address:~~

WAC 388-551-1840 Pediatric palliative care (PPC) case management/coordination services—Provider requirements.

~~(1)(e) Prescribe and dDocument in the client's medical record: (1)(h)(iii) Transfer to another hospice agency for pediatric palliative care services.~~

~~(1)(i)(iv) Specific documentations of the client's response... (e.g., ~~would~~ the client might have required acute care or hospital emergency room visits without the pediatric palliative care services).~~

A final cost-benefit analysis is available by contacting Pam Colyar, DSHS Health and Recover Services Administration, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1582, fax (360) 586-1471, e-mail colyaps@dshs.wa.gov. (The preliminary analysis is unchanged and will be final.)

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 8, Amended 16, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 16, Repealed 2.

Date Adopted: August 26, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1000 Hospice program - General. (1) The department's hospice program is a twenty-four hour a day program ((e)ordinated by a hospice interdisciplinary team)) that allows a terminally ill client to choose physical, pastoral/spiritual, and psychosocial comfort care rather than cure. ((The hospice program allows the terminally ill client to choose physical, pastoral/spiritual, and psychosocial comfort rather than cure.)) A hospice interdisciplinary team communicates with the client's nonhospice care providers to ensure the client's needs are met through the hospice plan of care. Hospitalization is used only for acute symptom management.

(2) ((Hospice care is initiated by the choice of)) A client, ((family, or)) a physician, or an authorized representative under RCW 7.70.065 may initiate hospice care. The client's physician must certify ((a)) the client as terminally ill and appropriate for hospice care.

(3) Hospice care ((may be)) is provided in a client's temporary or permanent place of residence.

(4) Hospice care ((is ended by the client or family (revocation), the hospice agency (discharge), or death)) ends when:

(a) The client or an authorized representative under RCW 7.70.065 revokes the hospice care;

(b) The hospice agency discharges the client;

(c) The client's physician determines hospice care is no longer appropriate; or

(d) The client dies.

(5) ((Bereavement care is provided to the family of the client who chooses hospice care. It provides emotional and spiritual comfort associated with the death of a hospice client)) Hospice care includes the provision of emotional and spiritual comfort and bereavement support to the client's family member(s).

(6) Department-approved hospice agencies must meet the general requirements in chapter 388-502 WAC, Administration of medical programs - Providers.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1010 Hospice program - Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions ((have the following meanings for)), apply to this subchapter. ((Defined words and phrases are bolded in the text.))

"Authorized representative" means an individual who has been authorized to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated. See RCW 7.70.065.

"Biologicals" means medicinal preparations including serum, vaccine autotoxins, and biotechnological drugs made from living organisms and their products.

"Brief period" means six days or less within a thirty consecutive-day period.

"(CSO)" "Community services office (CSO)" means ((the client's community services office of the department's

economic services administration)) an office of the department that administers social and health services at the community level.

"Discharge" means an agency ends hospice care for a client. ((See WAC 388-551-1350 for details.))

"Election period" means the time, ninety or sixty days, that the client is certified as eligible for and chooses to receive hospice care. ((See WAC 388-551-1310 for details.))

"Family" means ((any person(s) important to the client, as defined by the client)) an individual or individuals who are important to, and designated in writing by, the client and need not be relatives, or who are legally authorized to represent the client.

"(HCS)" means the client's home and community services office of the aging and adult services administration.

"Hospice interdisciplinary team" means the following health professionals who plan and deliver hospice care to a client as appropriate under the direction of a certified physician: Home health aides monitored by a registered nurse; therapists (physical, occupational, speech-language); registered nurses; physicians; social workers; counselors; volunteers; and others as necessary. **"Home and community services (HCS) office"** means an aging and disability services administration (ADSA) office that manages the state's comprehensive long-term care system which provides in-home, residential, and nursing home services to clients with functional disabilities.

"Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88A RCW who, under the direction and supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a hospice agency, or hospice care center.

"Home health aide services" means services provided by home health aides employed by an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

"Hospice agency" means a person or entity administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and volunteer. (Note: For the purposes of this subchapter, requirements for hospice agencies also apply to hospice care centers.)

"Hospice care center" means a homelike noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280 and applicable rules.

"Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and

individual's family in a place of temporary or permanent residence.

"Interdisciplinary team" means the group of individuals involved in client care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor, and volunteer.

"Palliative" means medical treatment designed to reduce pain or increase comfort, rather than cure.

"Plan of care." ((See WAC 388-551-1320 for details)) means a written document based on assessment of client needs that identifies services to meet these needs.

"Related condition(s)" means any health condition(s) that manifests secondary to or exacerbates symptoms associated with the progression of the condition and/or disease, the treatment being received, or the process of dying. (Examples of related conditions: Medication management of nausea and vomiting secondary to pain medication; skin breakdown prevention/treatment due to peripheral edema.)

"Residence" means ((where the client lives for an extended period of time)) a client's home or place of living.

"Revoke" ((and) or **"revocation"** ((mean a client or family member's)) means the choice to stop receiving hospice care. ((See WAC 388-551-1220 for details.))

"Terminally ill" means the client has a life expectancy of six months or less, assuming the client's disease process runs its natural course.

"Twenty-four-hour day" means a day beginning and ending at midnight.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1200 Client eligibility for hospice care. (1) A client who elects to receive hospice care must be eligible for one of the following ((Medicaid)) medical assistance programs ((to receive hospice care)), subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy program (CNP);
- (b) ((General assistance—disability determination pending (GAX);
- (c)) Limited casualty program - medically needy program (LCP-MNP); ((or
- (d)) (c) Children's health (V);
- (d) State children's health insurance program (SCHIP);
- (e) CNP - Alien emergency medical;
- (f) LCP-MNP - Alien emergency medical; or
- (g) General assistance-expedited disability (GAX).

(2) ((An eligible Medicaid client who voluntarily chooses hospice care must be certified by a physician as terminally ill before MAA pays for hospice care)) A hospice agency is responsible to verify a client's eligibility with the client or the client's home and community services (HCS) office or community services office (CSO).

(3) ((Clients enrolled in one of MAA's healthy options managed care plans receive all hospice services directly through their plan. The managed care plan must arrange or provide all hospice services for a managed care client)) A client enrolled in one of the department's managed care plans must receive all hospice services, including facility room and

board, directly through that plan. The client's managed care plan is responsible for arranging and providing all hospice services for a client enrolled in a managed care plan.

(4) ((Hospice clients attain institutional status as described in WAC 388-513-1320 when they elect and are certified for hospice care. See WAC 388-513-1380 for the client's financial participation requirements)) A client who is also eligible for Medicare part A is not eligible for hospice care through the department's hospice program. The department does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not receiving general inpatient care or inpatient respite care. See also WAC 388-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the department's hospice program when all of the following is met:

(a) The client's physician certifies the client has a life expectancy of six months or less.

(b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC 388-551-1310.

(c) The hospice agency serving the client:

(i) Notifies the department's hospice program within five working days of the admission of all clients, including:

(A) Medicaid-only clients;

(B) Medicaid-Medicare dual eligible clients;

(C) Medicaid clients with third party insurance; and

(D) Medicaid-Medicare dual eligible clients with third party insurance.

(ii) Meets the hospice agency requirements in WAC 388-551-1300 and 388-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the department requests and determines, on a case-by-case basis, the information that is needed for further review.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1210 Covered services ((included in)), including core services and supplies reimbursed through the hospice daily rate. (1) ((In the client's individual plan of care, the hospice interdisciplinary team identifies the specific Hospice services and supplies to be provided to the client)) The department reimburses a hospice agency for providing covered services, including core services and supplies described in this section, through the department's hospice daily rate, subject to the conditions and limitations described in this section and other WAC.

(2) ((The services must be all of the following)) To qualify for reimbursement, covered services, including core services and supplies in the hospice daily rate, must be:

(a) ((Medically necessary for palliative care)) Related to the client's hospice diagnosis;

(b) ((Related to the client's terminal illness)) Identified by the client's hospice interdisciplinary team;

(c) ((Prescribed by the client's attending physician, alternate physician, or hospice medical director)) Written in the client's plan of care (POC); and

(d) ~~((Supplied or arranged for by the hospice provider; and~~

~~(e) Included in the client's plan of care))~~ Made available to the client by the hospice agency on a twenty-four hour basis.

~~(3) ((The following intermittent services and supplies, paid by MAA's hospice daily rate, must be available from and offered by the hospice provider for the client as determined by the client's hospice interdisciplinary team:~~

~~(a) Medical equipment and supplies that are medically necessary for palliative care;~~

~~(b) Drugs and biologicals used primarily for the relief of pain and management of symptoms;~~

~~(c) Home health aide services furnished by qualified aides of the hospice agency. A registered nurse must complete a home-site supervisory visit every two weeks to assess aide services provided;~~

~~(d) Physical therapy, occupational therapy, and speech-language therapy to manage symptoms or enable the client to safely perform ADLs (activities of daily living) and basic functional skills;~~

~~(e) Physician services related to administration of the plan of care;~~

~~(f) Nursing care provided through the hospice agency by either:~~

~~(i) A registered nurse; or~~

~~(ii) A licensed practical nurse under the supervision of a registered nurse;~~

~~(g) Medical social services provided through the hospice agency by a social worker under the direction of a physician;~~

~~(h) Counseling services provided through the hospice agency to the client and his or her family members or caregivers;~~

~~(i) Medical transportation services; and~~

~~(j) Short-term, inpatient care, provided in a Medicare-certified hospice inpatient unit, hospital, or nursing facility))~~ The hospice daily rate includes the following core services that must be either provided by hospice agency staff, or contracted through a hospice agency, if necessary, to supplement hospice staff in order to meet the needs of a client during a period of peak patient loads or under extraordinary circumstances:

(a) Physician services related to the administration of POC.

(b) Nursing care provided by:

(i) A registered nurse (RN); or

(ii) A licensed practical nurse (LPN) under the supervision of an RN.

(c) Medical social services provided by a social worker under the direction of a physician.

(d) Counseling services provided to a client and the client's family members or caregivers.

(4) Covered services and supplies may be provided by a service organization or an individual provider when contracted through a hospice agency. To be reimbursed the hospice daily rate, a hospice agency must:

(a) Assure all contracted staff meets the regulatory qualification requirements;

(b) Have a written agreement with the service organization or individual providing the services and supplies; and

(c) Maintain professional, financial, and administrative responsibility.

(5) The following covered services and supplies are included in the appropriate hospice daily rate as described in WAC 388-551-1510(6), subject to the conditions and limitations described in this section and other WAC:

(a) Skilled nursing care;

(b) Drugs, biologicals, and over-the-counter medications used for the relief of pain and symptom control of a client's terminal illness and related conditions;

(c) Communication with nonhospice providers about care not related to the client's terminal illness to ensure the client's plan of care needs are met and not compromised;

(d) Medical equipment and supplies that are medically necessary for the palliation and management of a client's terminal illness and related conditions;

(e) Home health aide, homemaker, and/or personal care services that are ordered by a client's physician and documented in the POC. (Home health aide services are provided through the hospice agency to meet a client's extensive needs due to the client's terminal illness. These services must be provided by a qualified home health aide and are an extension of skilled nursing or therapy services. See 42 CFR 484.36);

(f) Physical therapy, occupational therapy, and speech-language therapy to manage symptoms or enable a client to safely perform ADLs (activities of daily living) and basic functional skills;

(g) Medical transportation services;

(h) A brief period of inpatient care, for general or respite care provided in a Medicare-certified hospice care center, hospital, or nursing facility; and

(i) Other services or supplies that are documented as necessary for the palliation and management of a client's terminal illness and related conditions;

(6) A hospice agency is responsible to determine if a nursing facility has requested authorization for medical supplies or medical equipment, including wheelchairs, for a client who becomes eligible for the hospice program. The department does not pay separately for medical equipment or supplies that were previously authorized by the department and delivered on or after the date the department enrolls the client in the hospice program.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1300 ((How to become a MAA) Requirements for a department-approved hospice ((provider)) agency. (1) To ~~((be reimbursed by MAA, a))~~ become a department-approved hospice agency ~~((must be:~~

~~((a)))~~, the department requires a hospice agency to provide documentation that it is Medicare, Title XVIII certified ~~((; and~~

~~((b) Enrolled with MAA as a provider of hospice care))~~ by the department of health (DOH) as a hospice agency.

(2) ~~((All services provided through a hospice agency must be performed by qualified personnel as required through Medicare's certification process in effect as of February 1, 1999. For more information on Medicare certifications, contact:~~

Department of Health
 Hospice Certification Program
 Mailstop 47852
 Olympia, Washington, 98504-7852-))

A department-approved hospice agency must at all times meet the requirements in chapter 388-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII Medicare Program.

(3) ((Freestanding hospice agencies licensed as hospitals by the department of health must sign an additional selective contract with MAA to receive payment from MAA)) To ensure quality of care for medical assistance client's, the department's clinical staff may conduct hospice agency site visits.

NEW SECTION

WAC 388-551-1305 Requirements for becoming a department-approved hospice care center (HCC). (1) To apply to become a department-approved hospice care center, the department requires a hospice agency to:

- (a) Be enrolled with the department as a department hospice agency (see WAC 388-551-1300);
- (b) Submit a letter of request to:

Hospice Program Manager
 Division of Medical Management
 Department of Social and Health Services
 PO Box 45506
 Olympia, WA 98504-5506; and

(c) Include documentation that confirms the agency is Medicare certified by department of health (DOH) as a hospice care center and provides one or more of the following levels of hospice care (levels of care are described in WAC 388-551-1500):

- (i) Routine home care;
- (ii) Inpatient respite care; and
- (iii) General inpatient care.

(2) A department-approved hospice care center must at all times meet the requirements in chapter 388-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII Medicare Program.

(3) A hospice agency qualifies as a department-approved hospice care center when:

- (a) All the requirements in this section are met; and
- (b) The department provides the hospice agency with written notification.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1310 ~~((Certifications (election periods) for hospice clients))~~ Hospice election periods, election statements, and the hospice certification process. ~~((A client chooses to receive Hospice care through a series of time limited periods, called "election periods." An example of this process is WAC 388-551-1315. Hospice providers are responsible for obtaining physician certifications for these election periods.~~

~~(1) A client's hospice coverage must be available for two initial ninety-day election periods followed by an unlimited number of succeeding sixty-day election periods.~~

~~(2) The hospice provider must document the client's medical prognosis of a specific terminal illness in the client's hospice record. This written certification must be filed in the client's hospice record for each election period. The certification must meet all of the following criteria:~~

~~(a) For the initial election period, signatures of the hospice medical director and the client's attending physician; and~~

~~(b) For subsequent election periods:~~

~~(i) Signature of the hospice medical director; and~~

~~(ii) Verbal certifications by the hospice medical director or the client's attending physician must be documented in writing no later than two calendar days after hospice care is initiated or renewed.~~

~~(3) The provider must file election statements in the client's hospice medical record. This election statement must include:~~

~~(a) Name and address of the hospice;~~

~~(b) Proof that client was fully informed about hospice care and waiver of other services;~~

~~(c) Effective date of the election; and~~

~~(d) Signature of the client or their representative.~~

~~(4) When a client's hospice coverage ends within an election period, the remainder of that election period is forfeited))~~

(1) Hospice coverage is available for two ninety-day election periods followed by an unlimited number of sixty-day election periods. A client or a client's authorized representative must sign an election statement to initiate or reinstate an election period for hospice care.

(2) The election statement must be filed in the client's hospice medical record within two calendar days following the day the hospice care begins and requires all of the following:

(a) Name and address of the hospice agency that will provide the care;

(b) Documentation that the client is fully informed and understands hospice care and waiver of other Medicaid and/or Medicare services;

(c) Effective date of the election; and

(d) Signature of the client or the client's authorized representative.

(3) The following describes the hospice certification process:

(a) When a client elects to receive hospice care, the department requires a hospice agency to:

(i) Obtain a signed written certification of the client's terminal illness; or

(ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by:

(A) The medical director of the hospice agency or a physician staff member of the interdisciplinary team; and

(B) The client's attending physician (if the client has one).

(iii) Place the signed written certification of the client's terminal illness in the client's medical file:

(A) Within sixty days following the day the hospice care begins; and

(B) Before billing the department for the hospice services.

(b) For subsequent election periods, the department requires the hospice agency to:

(i) Obtain a signed written certification statement of the client's terminal illness; or

(ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency; and

(iii) Place the written certification of the client's terminal illness in the client's medical file:

(A) Within two calendar days following the beginning of a subsequent election period; and

(B) Before billing the department for the hospice services.

(4) When a client's hospice coverage ends within an election period (e.g., the client revokes hospice care), the remainder of that election period is forfeited. The client may reinstate the hospice benefit at any time by providing an election statement and meeting the certification process requirements.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1320 Hospice plan of care. (1) ~~((The))~~ A hospice agency must establish ((the client's hospice plan of care)) a written plan of care (POC) for a client that describes the hospice care to be provided. The POC must be in accordance with ((Medicare)) department of health (DOH) requirements ((before hospice services are delivered. Hospice services delivered must be consistent with that plan of care)) as described in WAC 246-335-085, and meet the requirements in this section.

(2) A registered nurse or physician must conduct an initial physical assessment of ((the)) a client and ((must)) develop the ((plan of care)) POC with at least one other member of the hospice interdisciplinary team.

(3) ~~((The hospice interdisciplinary team))~~ At least two other hospice interdisciplinary team members must review ((in a case planning conference)) the ((plan of care,)) POC no later than two working days after it is developed.

(4) The ~~((plan of care))~~ POC must be reviewed and updated every two weeks by at least three members of the hospice interdisciplinary team~~((, including))~~ that includes at least:

- (a) A registered nurse;
- (b) A social worker; and
- (c) One other hospice interdisciplinary team member.

~~((5) Also see WAC 246-331-135 for the department of health's plan of care requirements.))~~

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1330 Hospice ~~((coordination of care))~~ - Client care and responsibilities of hospice agencies. (1) ~~((Once a client chooses hospice care from a hospice agency, that client gives up the right to:~~

~~(a) Covered Medicaid hospice services and supplies received at the same time from another hospice agency; and~~

~~(b) Any covered Medicaid services and supplies received from any other provider and which are related to the terminal illness.~~

~~(2) Services and supplies not covered by the Medicaid hospice benefit are paid separately, if covered under the client's Medicaid eligibility. These services include but are not limited to:~~

~~(a) COPES (community options program entry system) as determined and paid by the department's aging and adult services administration (AASA); and~~

~~(b) Medically intensive home care program (MIHCP) as determined by the department's division of developmentally disabled.~~

~~(3) Clients eligible for coordinated community aids services alternatives (CCASA) are not eligible for hospice coverage.~~

~~(4) The hospice provider must coordinate all the client's medical management for the terminal illness.~~

~~(5) All of the client's providers, including the hospice provider, must coordinate:~~

~~(a) The client's health care; and~~

~~(b) Services available from other department programs, such as COPES)) A hospice agency must facilitate a client's continuity of care with nonhospice providers to ensure that medically necessary care, both related and not related to the terminal illness, is met. This includes:~~

~~(a) Determining if the department has approved a request for prescribed medical equipment, such as a wheelchair. If the prescribed item is not delivered to the client before the client becomes covered by a hospice agency, the department will rescind the approval. See WAC 388-543-1500.~~

~~(b) Communicating with other department programs and documenting the services a client is receiving in order to prevent duplication of payment and to ensure continuity of care. Other department programs include, but are not limited to, programs administered by the aging and disability services administration (ADSA).~~

~~(c) Documenting each contact with nonhospice providers.~~

~~(2) When a client resides in a nursing facility, the hospice agency must:~~

~~(a) Coordinate the client's care with all providers, including pharmacies and medical vendors; and~~

~~(b) Provide the same level of hospice care the hospice agency provides to a client residing in their home.~~

~~(3) Once a client chooses hospice care, hospice agency staff must notify and inform the client of the following:~~

~~(a) By choosing hospice care from a hospice agency, the client gives up the right to:~~

~~(i) Covered Medicaid hospice service and supplies received at the same time from another hospice agency; and~~

~~(ii) Any covered Medicaid services and supplies received from any other provider that are necessary for the palliation and management of the terminal illness and related medical conditions.~~

~~(b) Services and supplies are not paid through the hospice daily rate if they are:~~

(i) Proven to be clinically unrelated to the palliation and management of the client's terminal illness and related medical conditions (see WAC 388-551-1210(3));

(ii) Not covered by the hospice daily rate;

(iii) Provided under a Title XIX Medicaid program when the services are similar or duplicate the hospice care services; or

(iv) Not necessary for the palliation and management of the client's terminal illness and related medical conditions.

(4) A hospice agency must have written agreements with all contracted providers.

Hospice - Discharges and Notification

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1340 When a client leaves hospice without notice. When a client chooses to leave hospice care or refuses hospice care without giving the hospice (~~(provider)~~) agency a revocation statement, as required by WAC 388-551-1360, the hospice (~~(provider)~~) agency must do all of the following:

(1) (~~(Notify MAA's hospice coordinator)~~) Within five working days of becoming aware of the client's decision, inform and notify in writing the department's hospice program manager (see WAC 388-551-1400 for further requirements);

(2) (~~(Stop billing MAA for hospice payment)~~) Complete a Medicaid Hospice 5-Day Notification form (DSHS 13-746) and forward a copy to the appropriate home and community services (HCS) office or community services office (CSO) to notify that the client is discharging from the program;

(3) Notify the client, or the client's authorized representative, that the client's discharge has been reported to (~~(MAA)~~) the department; and

(4) Document the effective date and details of the discharge in the client's hospice record.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1350 Discharges from hospice care.

(1) A hospice (~~(provider)~~) agency may discharge a client from hospice care when the client:

(~~(1)~~) (a) Is no longer certified for hospice care;

(~~(2)~~) (b) Is no longer appropriate for hospice care; or

(~~(3)~~) (c) The hospice agency's medical director determines the client is seeking treatment for the terminal illness (~~(from)~~) outside the plan of care (POC) (~~(as defined by the hospice interdisciplinary team)~~).

(2) At the time of a client's discharge, a hospice agency must:

(a) Within five working days, complete a Medicaid Hospice 5-Day Notification form (DSHS 13-746) and forward to the department's hospice program manager (see WAC 388-551-1400 for additional requirements), and a copy to the appropriate home and community services office (HCS) or community services office (CSO);

(b) Keep the discharge statement in the client's hospice record;

(c) Provide the client with a copy of the discharge statement; and

(d) Inform the client that the discharge statement must be:

(i) Presented with the client's current medical identification (medical ID) card when obtaining Medicaid covered healthcare services or supplies, or both; and

(ii) Used until the department issues the client a new medical ID card that identifies that the client is no longer a hospice client.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1360 Ending hospice care (revocations). (1) A client or a (~~(family member)~~) client's authorized representative may choose to stop hospice care at any time by signing a revocation statement.

(2) The revocation statement documents the client's choice to stop Medicaid hospice care. The revocation statement must include all of the following:

(a) Client's signature (or the client's authorized representative's signature if the client is unable to sign);

(b) Date the revocation was signed; and

(c) Actual date that the client chose to stop receiving hospice care.

(3) The hospice agency must keep any explanation supporting any difference in the signature and revocation dates in the client's hospice records.

(4) When a client revokes hospice care, the hospice agency must (~~(keep the revocation statement in the client's hospice record)~~);

(a) Within five working days of becoming aware of the client's decision, inform and notify in writing the department's hospice program manager (see WAC 388-551-1400 for additional requirements);

(b) Notify the appropriate home and community services (HCS) office or community services office (CSO) of the revocation by completing and forwarding a copy of the Medicaid Hospice 5-Day Notification form (DSHS 13-746) to the appropriate home and community services (HCS) office or community services office (CSO);

(c) Keep the revocation statement in the client's hospice record;

(d) Provide the client with a copy of the revocation statement; and

(e) Inform the client that the revocation statement must be:

(i) Presented with the client's current medical identification (medical ID) card when obtaining Medicaid covered healthcare services or supplies, or both; and

(ii) Used until the department issues a new medical ID card that identifies that the client is no longer a hospice client.

(5) After a client revokes hospice care, the remaining days (~~(on)~~) within the current election period are forfeited. The client may immediately enter the next consecutive election period (~~(immediately)~~). The client does not have to wait for the forfeited days to pass before entering the next consecutive election period.

~~((Hospice—Notification))~~NEW SECTION**WAC 388-551-1370 When a hospice client dies.**

When a client dies, the hospice agency must:

- (1) Within five working days, inform and notify in writing the department's hospice program manager; and
- (2) Notify the appropriate home and community services (HCS) office or community services office (CSO) of the client's date of death by completing and forwarding a copy of the Medicaid Hospice 5-Day Notification form (DSHS 13-746) to the appropriate HCS office or CSO.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1400 ((Hospice providers must notify the department)) Notification requirements for hospice agencies. (1) ~~((Notification within five working days avoids duplicative payments for services related to a client's terminal illness. Hospice providers must notify the MAA hospice coordinator, and either the client's CSO or HCS as appropriate.~~

(2) ~~Hospice providers must report any changes in the client's hospice status within five working days from when a MAA client:~~

- (a) ~~Begins the first day of hospice care;~~
- (b) ~~Changes hospice agencies. Clients may change hospice agencies only once per election period. Both the old and new hospice providers must supply the department as described in subsection (1) of this section with:~~
 - (i) ~~The effective date of discharge from the old agency; and~~
 - (ii) ~~The effective date of the admit to, the name of, and the provider number of the new agency;~~
 - (c) ~~Revokes the hospice benefit (home or institutional);~~
 - (d) ~~Discharges from hospice care;~~
 - (e) ~~Becomes an institutional facility resident;~~
 - (f) ~~Leaves an institutional facility as a resident; or~~
 - (g) ~~Dies.~~

(3) ~~A hospice agency must submit a client's assessment to MAA within five working days of MAA's request for that assessment)) To be reimbursed for providing hospice services, the hospice agency must complete a Medicaid Hospice 5-Day Notification form (DSHS 13-746) and forward to the department's hospice program manager within five working days from when a medical assistance client begins the first day of hospice care, or has a change in hospice status. The hospice agency must notify the department's hospice program of:~~

- (a) The name and address of the hospice agency;
- (b) The date of the client's first day of hospice care;
- (c) A change in the client's primary physician;
- (d) A client's revocation of the hospice benefit (home or institutional);
- (e) The date a client leaves hospice without notice;
- (f) A client's discharge from hospice care;

(g) A client who admits to a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care);

(h) A client who discharges from a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care.);

(i) A client who is eligible for or becomes eligible for Medicare or third party liability (TPL) insurance;

(j) A client who dies; or

(k) A client who transfers to another hospice agency. Both the former agency and current agency must provide the department with:

(i) The client's name, the name of the former hospice agency servicing the client, and the effective date of the client's discharge; and

(ii) The name of the current hospice agency serving the client, the hospice agency's provider number, and the effective date of the client's admission.

(2) The department does not require a hospice agency to notify the hospice program manager when a hospice client is admitted to a hospital for palliative care.

(3) When a hospice agency does not notify the department's hospice program within five working days of the date of the client's first day of hospice care as required in subsection (1)(c) of this section, the department authorizes the hospice daily rate reimbursement effective the fifth working day prior to the date of notification.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1500 ((Availability requirements for) Hospice daily rate - Four levels of hospice care. All services, supplies and equipment related to the client's terminal illness and related conditions are included in the hospice daily rate ~~((through))~~. The department pays for only one of the following four levels of hospice care per day (see WAC 388-551-1510 for payment methods):

(1) **Routine home care** ((for each day the client is at their residence, with no restriction on length or frequency of visits,)). Routine home care includes daily care administered to the client at the client's residence. The services are not restricted in length or frequency of visits, are dependent on the client's needs, and are provided to achieve palliation or management of acute symptoms.

(2) **Continuous home care** ~~((is acute episodic care received by the client to maintain the client at home and addresses a brief period of medical crisis. Continuous care consists predominately of nursing care. This benefit)). Continuous home care includes acute skilled care provided to an unstable client during a brief period of medical crisis in order to maintain the client in the client's residence and is limited to:~~

(a) A minimum of eight hours of acute care provided during a twenty-four-hour day;

(b) Nursing care that must be provided by a registered or licensed practical nurse for more than half the period of care; ~~((and))~~

(c) Homemaker, home health aide, and attendant services that may be provided as supplements to the nursing care; and

(d) In home care only (not care in a nursing facility or a hospice care center).

(3) Inpatient respite care. Inpatient respite ((is)) care ((received in an approved)) includes room and board services provided to a client in a department-approved hospice care center, nursing facility, or hospital. Respite care is intended to ((relieve)) provide relief to the client's primary caregiver((- This benefit)) and is limited to:

- (a) No more than ((five)) six consecutive days; and
- (b) A client not currently residing in a hospice care center, nursing facility, or hospital.

(4) General inpatient hospice care ((is)). General inpatient hospice care includes services administered to a client for pain ((and symptom management that cannot be provided in other settings)) control or management of acute symptoms. In addition:

(a) The services must conform to the client's written plan of care (POC).

(b) This benefit is limited to brief periods of care in ((MAA)) department-approved:

- (i) Hospitals;
- (ii) Nursing facilities; or
- (iii) Hospice ((inpatient facilities)) care centers.

(b) There must be documentation in the client's medical record to support the need for general inpatient level of hospice care.

Reviser's note: The typographical 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.

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1510 Rates methodology and payment method for hospice ((providers)) agencies. This section describes rates methodology and payment methods for hospice care provided ((under WAC 388-551-1500)) to hospice clients.

(1) ((Prior to submitting a claim to MAA, the hospice provider must file written certification in the client's hospice record per WAC 388-551-1310)) The department uses the same rates methodology as Medicare uses for the four levels of hospice care identified in WAC 388-551-1500.

(2) ((MAA may pay for Hospice care provided to clients in one of the following settings:

- (a) A client's residence;
- (b) Inpatient respite services; or
- (c) General inpatient as follows:

DAY OF	PAID AT
Admit	General Inpatient
Brief Period	General Inpatient
Death	General Inpatient
Other Discharge	Routine))

Each of the four levels of hospice care has the following three rate components:

(a) Wage component;

(b) Wage index; and

(c) Unweighted amount.

(3) ((To be paid by MAA, the hospice provider must provide and/or coordinate MAA covered:

(a) Medicaid hospice services; and

(b) Services that relate to the client's terminal illness at the time of the hospice admit)) To allow hospice payment rates to be adjusted for regional differences in wages, the department bases payment rates on the Metropolitan Statistical Area (MSA) county location. MSAs are identified in the department's current published billing instructions.

(4) ((MAA does not pay hospice providers for the client's last day, except for the day of death)) Payment rates for:

(a) Routine and continuous home care services are based on the county location of the client's residence.

(b) Inpatient respite and general inpatient care services are based on the MSA county location of the providing hospice agency.

(5) ((Hospice providers must bill MAA for their services using hospice-specific revenue codes)) The department pays hospice agencies for services (not room and board) at a daily rate calculated as follows:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence; or

(b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.

(6) ((MAA pays hospice providers for services (not room and board) at a daily rate calculated by one of the following methods and adjusted for current wages:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence for that particular client; or

(b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency)) The department:

(a) Pays for routine hospice care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(7) ((MAA pays nursing facility room and board payments to hospice agencies, not licensed as hospitals, at a day rate as follows:

(a) Directly to the hospice provider at ninety-five percent of the nursing facility's lowest current Medicaid day rate;

(b) The hospice agency pays the nursing facility at a day rate no greater than the nursing facility's lowest current Medicaid daily rate; and

(c) The correct amount of the patient's participation must be:

(i) Collected by the hospice agency as directed by the department each month; and

(ii) Forwarded to the nursing facility)) Hospice agencies must bill the department for their services using hospice-specific revenue codes.

(8) For hospice clients in a nursing facility:

(a) ~~((MAA)) The department pays nursing facility room and board payments ((to free standing hospice agencies licensed as hospitals by using MAA's administrative state-wide average day rate in effect at the time the contract is signed)) at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current Medicaid daily rate in effect on the date the services were provided; and~~

(b) ~~The hospice agency pays the nursing facility at a daily rate no greater than the nursing facility's current Medicaid daily rate.~~

(9) ~~((The department pays for COPES services clients directly to the COPES provider.~~

~~(a) Patient participation in that case is paid separately to the COPES provider.~~

~~(b) Hospice providers bill MAA directly for hospice services, not the COPES program)) The department:~~

~~(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.~~

~~(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:~~

~~(i) A client's last day of hospice care(e.g., client's discharge, revocation, or transfer); or~~

~~(ii) The day of death.~~

~~(10) The daily rate for authorized out-of-state hospice services is the same as for in-state non-MSA hospice services.~~

~~(11) The client's notice of action (award) letter states the amount of participation the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:~~

~~(a) Is responsible to collect the correct amount of the client's participation if the client has any; and~~

~~(b) Must show the client's monthly participation on the hospice claim. (Hospice providers may refer to the department's current published billing instructions for how to bill a hospice claim.) If a client has a participation amount that is not reflected on the claim and the department reimburses the amount to the hospice agency, the amount is subject to recoupment by the department.~~

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1520 Payment method for nonhospice providers. (1) ~~((Hospitals which provide inpatient care to clients in the hospice program for medical conditions not related to their terminal illness may be paid)) The department pays for hospitals that provide inpatient care to clients in the hospice program for medical conditions not related to their terminal illness according to chapter 388-550 WAC, Hospital services.~~

(2) ~~((MAA)) The department pays providers who are attending physicians ((who are)) and not employed by the hospice agency ((at their)), the usual amount through the resource based relative value scale (RBRVS) fee schedule:~~

~~(a) For direct physician care services provided to a hospice client;~~

~~(b) When the provided services are not related to the terminal illness; and~~

~~(c) When the client's providers, including the hospice ((provider)) agency, coordinate the health care provided.~~

~~(3) The department's aging and disability services administration (ADSA) pays for services provided to a client eligible under the community options program entry system (COPEs) directly to the COPEs provider.~~

~~(a) The client's monthly participation amount, if there is one, for services provided under COPEs is paid separately to the COPEs provider; and~~

~~(b) Hospice agencies must bill the department's hospice program directly for hospice services, not the COPEs program.~~

AMENDATORY SECTION (Amending WSR 99-09-007, filed 4/9/99, effective 5/10/99)

WAC 388-551-1530 Payment method for Medicaid-Medicare dual eligible clients. (1) ~~((MAA)) The department does not pay for any hospice care provided to a client covered by ((part A)) Medicare part A (hospital insurance).~~

(2) ~~((MAA)) The department may pay for hospice care provided to a client:~~

~~(a) Covered by ((part B)) Medicaid part B (medical insurance); and~~

~~(b) Not covered by ((part A)) Medicare part A.~~

~~(3) For hospice care provided to a Medicaid-Medicare dual eligible client, hospice ((providers must)) agencies are responsible to bill:~~

~~(a) Medicare before billing ((Medicaid, except for hospice nursing facility room and board)) the department;~~

~~(b) The department for hospice nursing facility room and board;~~

~~(c) The department for hospice care center room and board; and~~

~~(d) Medicare for general inpatient care or inpatient respite care.~~

~~(4) All the limitations and requirements related to hospice care described in this ((chapter)) subchapter apply to the payments described in this section.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-551-1315 Example of how hospice client certifications (election periods) work.

WAC 388-551-1410 Hospice providers must notify institutional providers.

NEW SECTION

WAC 388-551-1800 Pediatric palliative care (PPC) case management/coordination services - General. Through a hospice agency, the department's pediatric palliative care (PPC) case management/coordination services provide the care coordination and skilled care services to clients who have life-limiting medical conditions. Family members and caregivers of clients eligible for pediatric palliative care

services may also receive support through care coordination when the services are related to the client's medical needs.

NEW SECTION

WAC 388-551-1810 Pediatric palliative care (PPC) case management/coordination services - Client eligibility. To receive pediatric palliative care (PPC) case management/coordination services, a person must:

- (1) Be twenty years of age or younger;
- (2) Be a current recipient of the:
 - (a) Categorically needy program (CNP);
 - (b) Limited casualty program - medically needy program (LCP-MNP);
 - (c) CNP - Alien emergency medical;
 - (d) LCP-MNP-Alien emergency medical;
 - (e) Children's health insurance program (SCHIP); and
- (3) Have a life-limiting medical condition that requires case management and coordination of medical services due to at least three of the following circumstances:
 - (a) An immediate medical need during a time of crisis;
 - (b) Coordination with family member(s) and providers required in more than one setting (i.e. school, home, and multiple medical offices or clinics);
 - (c) A life-limiting medical condition that impacts cognitive, social, and physical development;
 - (d) A medical condition with which the family is unable to cope;
 - (e) A family member(s) and/or caregiver who needs additional knowledge or assistance with the client's medical needs; and
 - (f) Therapeutic goals focused on quality of life, comfort, and family stability.

NEW SECTION

WAC 388-551-1820 Pediatric palliative care (PPC) contact - Services included and limitations to coverage.

- (1) The department's pediatric palliative care (PPC) case management/coordination services cover up to six pediatric palliative care contacts per client, per calendar month, subject to the limitations in this section and other applicable WAC.
 - (2) One pediatric palliative care contact consists of:
 - (a) One visit with a registered nurse, social worker, or therapist (for the purpose of this section, the department defines therapist as a licensed physical therapist, occupational therapist, or speech/language therapist) with the client in the client's residence to address:
 - (i) Pain and symptom management;
 - (ii) Psychosocial counseling; or
 - (iii) Education/training.
 - (b) Two hours or more per month of case management or coordination services to include any combination of the following:
 - (i) Psychosocial counseling services (includes grief support provided to the client, client's family member(s), or client's caregiver prior to the client's death);
 - (ii) Establishing or implementing care conferences;
 - (iii) Arranging, planning, coordinating, and evaluating community resources to meet the client's needs;

(iv) Visits lasting twenty minutes or less (for example, visits to give injections, drop off supplies, or make appointments for other PPC-related services.); and

(v) Visits not provided in the client's home.

(3) The department does not pay for a pediatric palliative care contact described in subsection (2) of this section when a client is receiving services from any of the following:

- (a) Home health program;
- (b) Hospice program;
- (c) Private duty nursing (private duty nursing can subcontract with PPC to provide services)/medical intensive care;
- (d) Disease case management program; or
- (e) Any other department program that provides similar services.

(4) The department does not pay for a pediatric palliative care contact that includes providing counseling services to a client's family member or the client's caregiver for grief or bereavement for dates of service after a client's death.

NEW SECTION

WAC 388-551-1830 How to become a department-approved pediatric palliative care (PPC) case management/coordination services provider. This section applies to department-enrolled providers who currently do not provide pediatric palliative care (PPC) services to medical assistance clients.

(1) To apply to become a department-approved provider of PPC services, a provider must:

- (a) Be a department-approved hospice agency (see WAC 388-551-1300 and 388-551-1305); and
- (b) Submit a letter to the department's hospice/PPC program manager requesting to become a department-approved provider of PPC and include a copy of the provider's policies and position descriptions with minimum qualifications specific to pediatric palliative care.

(2) A hospice agency qualifies to provide PPC services when:

- (a) All the requirements in this section are met; and
- (b) The department provides the hospice agency with written notification.

NEW SECTION

WAC 388-551-1840 Pediatric palliative care (PPC) case management/coordination services - Provider requirements. (1) An eligible provider of pediatric palliative care (PPC) case management/coordination services must do all of the following:

- (a) Meet the conditions in WAC 388-551-1300;
- (b) Confirm that a client meets the eligibility criteria in WAC 388-551-1810 prior to providing the pediatric palliative care services;
- (c) Place in the client's medical record a written order for PPC from the client's physician;
- (d) Determine and document in the client's medical record the medical necessity for the initial and ongoing care coordination of pediatric palliative care services;
- (e) Document in the client's medical record:

(i) A palliative plan of care (POC) (a written document based on assessment of a client's individual needs that identifies services to meet those needs).

(ii) The medical necessity for those services to be provided in the client's residence; and

(iii) Discharge planning.

(f) Provide medically necessary skilled interventions and psychosocial counseling services by qualified interdisciplinary hospice team members;

(g) Assign and make available a PPC case manager (nurse, social worker or therapist) to implement care coordination with community-based providers to assure clarity, effectiveness, and safety of the client's POC;

(h) Complete and fax the Pediatric Palliative Care (PPC) Referral and 5-Day Notification form (DSHS 13-752) to the department's PPC program manager within five working days from date of occurrence of the client's:

(i) Date of enrollment in PPC.

(ii) Discharge from the hospice agency or PPC program when the client:

(A) No longer meets PPC criteria;

(B) Is able to receive all care in the community;

(C) Does not require any services for sixty days; or

(D) Discharges from the PPC program and enrolls in the department's hospice program.

(iii) Transfer to another hospice agency for pediatric palliative care services.

(iv) Death.

(i) Maintain the client's file which includes the POC, visit notes, and all of the following:

(i) The client's start of care date and dates of service;

(ii) Discipline and services provided (in-home or place of service);

(iii) Case management activity and documentation of hours of work; and

(iv) Specific documentation of the client's response to the palliative care and the client's and/or client's family's response to the effectiveness of the palliative care (e.g. the client might have required acute care or hospital emergency room visits without the pediatric palliative care services).

(j) Provide when requested by the department's PPC program manager, a copy of the client's POC, visit notes, and any other documents listing the information identified in subsection (1)(i) of this section.

(2) If the department determines the POC, visit notes, and/or other required information do not meet the criteria for a client's PPC eligibility or does not justify the billed amount, any payment to the provider is subject to recoupment by the department.

NEW SECTION

WAC 388-551-1850 Pediatric palliative care (PPC) case management/coordination services - Rates methodology. (1) The department determines the reimbursement rate for a pediatric palliative care (PPC) contact described in WAC 388-551-1820 using the average of statewide Metropolitan Statistical Area (MSA) home health care rates for skilled nursing, physical therapy, speech-language therapy and occupational therapy.

(2) The department makes adjustments to the reimbursement rate for PPC contacts when the legislature grants a venter rate change. New rates become effective as directed by the legislature and are effective until the next rate change.

(3) The reimbursement rate for authorized out-of-state PPC services is the same as the in-state non-MSA rate.

WSR 05-19-003

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 3:58 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: This rule addresses what happens if a displaced employee chooses to be removed from an EBU before the effective date of the contract.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-040 on July 27, 2005.

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

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

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

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

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

Date Adopted: September 8, 2005.

Eva N. Santos
Director

NEW SECTION

WAC 357-43-008 What happens if a displaced employee chooses to be removed from the employee business unit before the effective date of a contract that is awarded to the employee business unit? When a displaced employee chooses to be removed from an employee business unit prior to the effective date of the contract that is awarded to the employee business unit, the following applies:

(1) If the displaced employee chooses to be removed before the employer notifies the employee business unit of the intent to award the contract to the employee business unit (as described in WAC 236-51-600), the displaced employee has layoff rights in accordance with WAC 357-46-012.

(2) If the displaced employee chooses to be removed after the employer notifies the employee business unit of the intent to award the contract to the employee business unit (as described in WAC 236-51-600), the displaced employee has no layoff rights under chapter 357-46 WAC and is considered to have resigned when his/her position is eliminated.

WSR 05-19-004
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:00 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: These rules address the reasons for layoff and how a state employer will layoff a displaced employee following the award of a contract under the competitive contracting process.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-010.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-039 on July 27, 2005.

Changes Other than Editing from Proposed to Adopted Version: In WAC 357-46-012, a sentence was added to subsection (3) which states that EBU members' layoff rights will be determined by the employee business unit's layoff procedure as provided in WAC 357-43-100.

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 1, Repealed 0.

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

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

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

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

Date Adopted: September 8, 2005.

Eva N. Santos
 Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-010 What are the reasons for layoff?

(1) Employees may be laid off without prejudice according to layoff procedures that are consistent with these rules. The reasons for layoff include, but are not limited to, the following:

- (a) Lack of funds;
- (b) Lack of work; or
- (c) Organizational change.

(2) Examples of layoff actions due to lack of work may include, but are not limited to:

- (a) Termination of a project or special employment;
- (b) Availability of fewer positions than there are employees entitled to such positions;
- (c) Employee's ineligibility to continue in a position following its reallocation to a class with a higher salary range maximum; or

(d) Employee's ineligibility to continue, or choice not to continue, in a position following its reallocation to a class with a lower salary range maximum.

(e) Elimination of a position due to the work of the position being competitively contracted.

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.

NEW SECTION

WAC 357-46-012 Following the award of a contract under the competitive contracting process, how does an employer layoff displaced employees as defined by WAC 357-43-001?

(1) If an employee business unit as defined by WAC 357-43-001 is not awarded the contract, all displaced employees as defined by WAC 357-43-001 are subject to the employer's layoff procedure when the positions are eliminated or reduced.

(2) Displaced employees as defined by WAC 357-43-001 who are not part of the employee business unit awarded the contracted are subject to the employer's layoff procedure when the employees' positions are eliminated or reduced (See WAC 357-43-008 for what happens if a displaced employee chooses to be removed from an employee business unit.)

(3) Displaced employees as defined by WAC 357-43-001 who are part of the employee business unit awarded the contract become an employee business unit member on the effective date of the contract. The layoff rights of employee business unit members are determined by the employee business unit's layoff procedure as provided in WAC 357-43-100. Employee business unit members do not have layoff rights under chapter 357-46 WAC.

Reviser's note: The typographical 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.

WSR 05-19-005
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:02 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of this rule is to address the administration of the general government transition pool.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-100.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-037 on July 27, 2005.

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

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

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

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

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

Date Adopted: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must certify transition pool candidates when ~~((a certified pool contains eligible candidates other than layoff or internal promotional candidates))~~ there are no internal layoff list candidates.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

WSR 05-19-006

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:04 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of this rule is to define the term "disabled veteran."

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-115.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-036 on July 27, 2005.

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

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

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

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

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

Date Adopted: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-115 Disabled veteran. For affirmative action purposes, a person:

(1) ~~((e))~~ Entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 percent or more((;)) or ((a person)) disability rated at least 10 percent in the case of a veteran who has been determined by the Veterans Administration to have a serious employment handicap; or

(2) ~~((w))~~ Whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

WSR 05-19-007

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:06 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of these rules is to address separation due to unauthorized absence.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-215, 357-46-220, and 357-46-225.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-091 on August 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: As a result of discussions with stakeholders the word "subsequent" was removed from the last sentence in WAC 357-46-215.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-215 How is an employee who is being separated for unauthorized absence notified? Following an unauthorized absence of at least three consecutive working days, the employer may separate an employee by sending a separation notice to the employee by personal service or by United States mail to the last known address of the employee. For a permanent employee, the separation notice must inform the employee of the ability to petition the employer for reinstatement and the right to appeal the separation to the board as provided in chapter 357-52 WAC.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-220 How can a ~~(*)~~ permanent employee separated for unauthorized absence petition for reinstatement? A permanent employee separated for unauthorized absence may petition the appointing authority in writing to consider reinstatement. The employee must provide proof that the absence was involuntary or unavoidable. The employer must receive the employee's petition within seven calendar days of personal service or deposit in the United States mail of the separation notice.

NEW SECTION

WAC 357-46-222 Must the employer respond to an employee's petition for reinstatement within a specific time frame? The employer must respond in writing to an employee's petition for reinstatement as provided in WAC 357-46-220 within seven calendar days of receipt of the employee's petition.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-225 Can a permanent employee appeal if the employer does not reinstate the employee under WAC 357-46-220? Within thirty calendar days of the effective date of the separation, a permanent employee may appeal the separation to the board. ((If a permanent employee is not reinstated under WAC 357-46-220, the employee must be notified in writing of the right to appeal to the board as provided in chapter 357-52 WAC.)) Petitioning the employer for reinstatement does not lengthen the thirty calendar days within which the employee may appeal to the board. Appeals may not be based on information other than that shared with the employer at the time of the request for reinstatement.

WSR 05-19-008

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:08 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of these rules is to address the notice requirement for separation due to disability and separation for nondisciplinary reasons.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-170 and 357-46-200.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-089 on August 2, 2005.

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: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-170 What is the notice requirement before separating an employee ~~((must a permanent employee be notified of before he/she is separated))~~ due to disability under the provisions of WAC 357-46-160? Before separating an employee from employment under the provisions of WAC 357-46-160, the employer must provide at least seven calendar days' written notice to the employee. For permanent employees, the notice ~~((A permanent employee being separated due to disability))~~ must ~~((be informed in writing of the))~~ include information on how ~~((option))~~ to apply for reemployment as provided in WAC 357-19-475.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-200 What is the notice requirement before separating an employee for nondisciplinary reasons under the provisions of WAC 357-46-195? (1) Before separating an employee from employment under the provisions of WAC 357-46-195, the employer must provide at least fifteen calendar days' written notice to the employee and state the reason for separation. If, within the notice period, the employee satisfactorily demonstrates why the separation should not occur, the appointing authority may rescind the separation notice.

(2) The employer should consider reassignment during the notice period if continued employment in the position represents a liability.

(3) This section does not apply to separations due to disability. WAC 357-46-170 specifies the notice requirement when separating an employee due to disability.

WSR 05-19-009

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:09 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of these rules is to address trial service periods and probationary periods.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-030, 357-19-181, and 357-19-090.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-090 on August 2, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-030 When may an employee be required to serve a trial service period? A permanent employee who transfers, voluntarily demotes, ~~((or))~~ is elevated, or is reverted to a position may be required by the employer to serve a trial service period in accordance with the employer's policy per WAC 357-19-090. (See WAC 357-46-110 for information on when an employee may be required to serve a transition review period.)

NEW SECTION

WAC 357-19-035 When is a trial service period not allowed for an employee who is reverted to a position? Employers are not allowed to require a trial service period when an employee is being reverted to a comparable position with the same job duties as the position in which the employee last held permanent status. The employer determines the comparability of the position.

AMENDATORY SECTION (Amending WSR 05-12-085, filed 5/27/05, effective 7/1/05)

WAC 357-19-181 When is an employee appointed to a position with permanent status? An appointing authority must make a permanent status appointment of an employee under the following conditions:

(1) Upon successful completion of a probationary, trial service, or transition review period;

(2) Upon reassignment of a permanent employee who is not in trial service status;

(3) Upon transfer, demotion, reversion, or elevation when the employee is not required to serve a trial service period;

(4) Upon rehire from layoff or appointment to a position as a layoff option when a transition review period is not required;

(5) Upon the director conferring permanent status to an employee under remedial action provisions; and

(6) Upon conversion of an exempt position to the classified service, per WAC 357-19-225, if the incumbent has been employed for at least an amount of time equal to the probationary period for the class. If the incumbent has not been employed that long, the employee must serve a probationary period. The employer may count the time spent in the position prior to conversion towards the probationary period.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-090 Must employers have a policy on probationary and trial service periods? Employers must publish a policy on probationary and trial service periods that minimally addresses the employer's basis for determining and notifying an employee:

(1) When a trial service period is required upon transfer, voluntary demotion, reversion or elevation as provided in WAC 357-19-030.

(2) When a probationary or trial service period is extended, per WAC 357-19-045 and 357-19-060; and

(3) When a probationary or trial service period is continued, per WAC 357-19-070.

WSR 05-19-010

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:12 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of this rule is to address financial incentives for EBU members.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-038 on July 27, 2005.

Changes Other than Editing from Proposed to Adopted Version: As a result of discussions with stakeholders, it was determined that the last sentence in this rule should be changed to refer you to chapter 41.60 RCW.

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

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

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

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

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

Date Adopted: September 8, 2005.

Eva N. Santos
Director

NEW SECTION

WAC 357-43-120 Can EBU members receive financial incentives for any cost savings that result from completing performance requirements for less cost or better efficiency than what was anticipated in the agreement with the EBU? EBU members may receive financial incentives for any cost savings resulting from completing the performance requirements for less cost or better efficiency than what was anticipated in the agreement with the EBU. The financial incentives must be provided using reward or incentive plans recognized in Chapter 41.60 RCW.

WSR 05-19-011

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 8, 2005, 4:13 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: The purpose of these rules is to address director's reviews.

Citation of Existing Rules Affected by this Order: Amending WAC 357-49-010, 357-52-010, and 357-52-190.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-16-092 on August 2, 2005.

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 7, Amended 3, 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 7, Amended 3, Repealed 0.

Date Adopted: September 8, 2005.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-082, filed 5/27/05, effective 7/1/05)

WAC 357-49-010 For what actions may an individual request a director's review? (1) If the department is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results or the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or

(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) In addition to the subject((s)) listed in section (2) of this rule, an employee may request a director's review of an alleged violation of the civil service laws or rules within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) ((#))Allegations arising from the development and adoption of the classification plan under the provisions of WAC 357-10-020;

(b) An alleged violation of civil service laws or rules pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection 2 of this section; or

(c) ((#))The actions of reduction, dismissal, suspension, demotion or separation.

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules.

NEW SECTION

WAC 357-49-017 When is a director's review part of the appeal process? When an individual requests a director's review for any of the following types of actions, the director's review constitutes the initial step of the appeal process:

(1) Review of an employee's allocation or reallocation per WAC 357-13-080;

(2) Review of an alleged violation of civil service law or rules per WAC 357-49-010 (2) and (4); and

(3) Review of a remedial action request per WAC 357-49-010(5).

NEW SECTION

WAC 357-49-018 Does an individual or an employer have the right to appeal the results of a director's review to the board? Except as provided in WAC 357-49-010(1), either party may appeal the results of the director's review to the board by filing written exceptions to the director's determination in accordance with chapter 357-52 WAC. In accordance with WAC 357-52-010, written exceptions for appeals of allocation or reallocation are filed:

(1) Through December 31, 2005, with personnel appeals board; and

(2) As of January 1, 2006, with personnel resources board.

NEW SECTION

WAC 357-49-019 What civil service rules govern the director's review process? Chapter 357-49 WAC governs the process under which director's reviews are conducted.

NEW SECTION

WAC 357-49-022 Who has the burden of proof in a director's review? The individual or employee requesting the director's review has the burden of proof in a director's review.

NEW SECTION

WAC 357-49-025 How must exhibits for director's reviews be prepared and exchanged? (1) When exhibits are submitted for any director's review, one copy must be provided for the director or designee and one copy must be provided to the opposing party.

(2) For allocation reviews, employees must submit all exhibits through the employer's human resource office. The employer's human resource representative is responsible for forwarding all exhibits to the director or designee within the time frames set by the director or designee.

(3) For all other director's reviews, the party submitting the exhibit is responsible for providing copies to the director or designee and opposing party within the time frames set by the director or designee.

(4) The parties must pre-mark their exhibits for identification before they are provided to the opposing party and submitted to the director or designee.

(5) The director or designee may limit the number, scope and timing of exhibits.

NEW SECTION

WAC 357-49-035 When does a director's determination become final? (1) Director review decisions regarding

the removal of an individual's name from an applicant or candidate pool or an individual's examination results are not subject to further review or appeal and become final when notice of the determination is served on the parties.

(2) For all other director's determinations, if no exceptions are filed, the determination becomes final thirty calendar days after notice of the determination is served on the parties.

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

WAC 357-52-010 What actions may be appealed? (1)

Any permanent employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(2) Any employee, subject to the statutory jurisdiction of the board who is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, or an employer, may appeal to the board as follows:

(a) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(b) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee or employer may appeal to the board by filing written exceptions to the director's review determination, except as provided in WAC 357-49-010(1).

(3) Through December 31, 2005, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel appeals board by filing written exceptions to the director's review determination in accordance with Title 358 WAC. As of January 1, 2006, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(4) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(5) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(6) Any permanent Washington management service employee who is dismissed, suspended, demoted, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a reduction-in-force action is not subject to appeal.

AMENDATORY SECTION (Amending WSR 05-01-191, filed 12/21/04, effective 7/1/05)

WAC 357-52-190 What must be included in a party's written exceptions to a recommended decision? The written exceptions must set forth specific exceptions to the recommended decision and any additional errors a party contends were made by the hearing officer. If a party contends that the hearing officer has made an error which requires a

review of the record, the party must identify the specific portion(s) of the record that support each claimed error.

NEW SECTION

WAC 357-52-193 What must be included in a party's written exceptions to a director's determination? The written exceptions must set forth specific exceptions to the director's determination and any additional errors a party contends were made by the director's designee. The party must identify the specific portion(s) of the record that support each exception or claimed error.

WSR 05-19-014
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 9, 2005, 11:02 a.m., effective October 10, 2005]

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

Purpose: To explain the eligibility criteria, general requirements, and application process for school employees' retirement system Plan 2 and 3 disability benefits.

Statutory Authority for Adoption: RCW 41.50.050(5) and 41.35.020.

Other Authority: RCW 41.35.440 and 41.35.690.

Adopted under notice filed as WSR 05-16-078 on August 1, 2005.

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

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

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

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

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

Date Adopted: September 7, 2005.

Sandra J. Matheson
Director

NEW SECTION

WAC 415-110-436 SERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses. Members may also be eligible for benefits from the Washington state departments of labor and industries (work-

ers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a SERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-110-326. If you choose an option with a survivor feature, your monthly benefit will be actuarially reduced to offset the cost.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete, sign and have notarized. If you are married, your spouse must sign consent of the benefit option you choose.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) If I am eligible to retire, may I still apply for disability benefits? Yes, however, there will be no difference in the dollar amount of your benefit.

(7) Once my application is approved, when will my benefit begin?

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) What are my options if my application is denied?

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a SERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) What information must be provided to the department if I am receiving disability benefits?

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) How long will my disability benefits last? You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) Are my disability benefits taxable? You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) Are disability benefits subject to court or administrative orders? Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by

federal law. For more information, see RCW 41.35.100(3) or contact the department.

(13) Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997? No. For more information, see RCW 41.35.110.

(14) How is my disability benefit affected if I am a member of more than one retirement system? If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) Is it possible to lose my disability benefits after I begin receiving them?

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.35.010(4), at a comparable compensation.

(b) If you return to employment and reenter SERS membership, your benefits will cease.

(16) If I take my disability benefit in a lump sum and return to work, may I restore my service credit? Yes, you may restore your service credit if you take a lump sum benefit and return to SERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

WSR 05-19-015

PERMANENT RULES

HORSE RACING COMMISSION

[Filed September 9, 2005, 2:52 p.m., effective October 10, 2005]

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

Purpose: To amend WAC 260-49-070, to allow source market fees to be paid either monthly or quarterly as determined by the commission.

Citation of Existing Rules Affected by this Order: Amending WAC 260-49-070 Distribution of source market fee.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 05-16-073 on August 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: All the deletions and additions in the proposed to adopted version were removed. The final version adopted added "unless otherwise directed by the commission[" to subsections (1) and (2) of the current rule.

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

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

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

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

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

Date Adopted: September 8, 2005.

Patty Sorby
for Robert M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-070 Distribution of source market fee.

(1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) Ninety percent of the total source market fee directly to the class 1 racing association and the remaining ten percent directly to the commission.

(b) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the breeders' award fund.

(c) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(d) The commission shall distribute two and one-half percent of the total source market fee to the Washington bred

owners' bonus account and one-half of one percent of the total source market fee to the class C purse fund account and seven percent of the total source market fee to the commission's operating account.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

WSR 05-19-016

PERMANENT RULES

HORSE RACING COMMISSION

[Filed September 9, 2005, 2:53 p.m., effective October 10, 2005]

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

Purpose: To adopt a new section, WAC 260-48-960 Handicapping contests, to establish a rule for the conduct of handicapping contests, as required in SSB 5953 (59th legislature).

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-16-111 [05-16-111] on August 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: The term "provided" in subsection (4) was changed to "awarded," and the terms "competitor" in subsections (4) and (7) changed to "participants."

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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: September 8, 2005.

Patty Sorby
for Robert M. Leichner
Executive Secretary

NEW SECTION

WAC 260-48-960 Handicapping contests. A licensed class 1 racing association may, with the approval of the commission, operate a handicapping contest at which the participants may be charged an entry fee. All paid-entry handicapping contests must be conducted in accordance with the provisions of this rule.

(1) A handicapping contest is defined as a competitive event, where participants, using individual skill to evaluate a variety of factors including the past performance of horses to

determine the relative qualities and abilities of horses in a race, attempt to outperform other participants in selecting the finish of horses. Participants who are most successful in selecting horses become eligible to win prizes as prescribed in the official rules of the contest. Prizes and format are pre-defined and at the discretion of the class 1 racing association.

(2) A class 1 racing association desiring to offer a paid-entry handicapping contest must first apply for and receive approval from the commission to conduct a handicapping contest in Washington. The class 1 racing association must apply to the commission for approval of each and every contest. The class 1 racing association must include with its application the proposed rules for conducting the handicapping contest and the determination of prizes. The class 1 racing association shall obtain written approval to operate the handicapping contest prior to the acceptance of any entry fees regarding said contest.

(3) The class 1 racing association approved to operate a handicapping contest shall distribute at least ninety-five percent of the entry fees as prizes to the winners. Nothing in this section shall preclude an operator from providing additional prizes or promotions.

(4) The entry fee to enter a handicapping contest shall be set by the class 1 racing association. The entry fee and a description of all goods and services to be awarded as part of the handicapping contest must be fully disclosed to each participant prior to paying the entry fee. In addition, all prizes, including amenities such as airfare, meals and lodging, shall also be fully disclosed to each participant prior to paying the entry fee.

(5) Races that are the subject of a handicapping contest must be races on which the class 1 racing association is authorized to conduct parimutuel wagering.

(6) The officers and employees of the class 1 racing association operating a handicapping contest, and their immediate families are prohibited from participating in any handicapping contest. Commissioners and employees of the commission are also prohibited from participating in any handicapping contest in Washington.

(7) The class 1 racing association shall provide the commission a report on every handicapping contest including a record of all entry fees collected, the number of participants for each contest, the amount the class 1 racing association paid in prizes, and the name and address of each winning participant.

(8) Any violation of this section shall be referred to the commission. The commission shall have sole authority to ensure compliance with this rule, conduct hearings on violations, and determine penalties.

WSR 05-19-017

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 9, 2005, 2:58 p.m., effective October 10, 2005]

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

Purpose: Chapter 4, Laws of 2003 2nd sp.s. (2ESB 6097) made substantive changes to the unemployment insurance program. A number of those changes became effective

in 2005. The proposed rules clarify requirements for employers reporting taxes and wages, define terms, update penalties for employers who do not report as instructed, and revise rules concerning predecessor/successor employers to be consistent with current law.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-320-060; and amending WAC 192-300-050, 192-310-010, 192-310-030, and 192-320-050.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.12.042.

Adopted under notice filed as WSR 05-13-157 on June 21, 2005.

Changes Other than Editing from Proposed to Adopted Version: A number of wording changes were made to comply with Executive Order 05-03, Plain talk.

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 4, Amended 4, 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 4, Amended 4, Repealed 1.

Date Adopted: August 31, 2005.

Karen T. Lee
Commissioner

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-300-050 What is a (P)predecessor-successor relationship? (~~defined~~) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

(a) All(~~;~~) or (~~a portion~~) part of your operating assets as defined in subsection (3) below; or

(b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

(a) (~~A portion~~) Part of a predecessor employer's operating assets, or

(b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the (~~properties~~) resources you use in the normal course of business (~~operations~~) to (~~generate~~) produce your operating income. They may include (~~properties~~) resources that are

real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. (~~Employees are not operating assets.~~)

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (6) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that (~~occurred as a result of~~) resulted from acquiring or reorganizing the business (~~acquisition or reorganization~~), beginning when the acquisition started and ending when the primary (~~entity~~) unit is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by (~~either~~) the predecessor, successor, or a combination of both.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-310-010 (~~Employer~~) What reports are required from an employer?—RCW 50.12.070. (1) **Master application.** Every person or (~~entity, which has~~) unit with one or more individuals performing services for it in the state of Washington (~~;~~) must file a master application with the department. The application must be in a format (~~prescribed~~) approved by the commissioner.

(2) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a (~~quarterly~~) tax report with the commissioner. The report must list (~~ing~~) the total wages paid to (~~all individuals~~) every employee (~~in its employ~~) during that (~~calendar~~) quarter.

(b) Report of employees' (~~'s~~) wages. Each calendar quarter, every employer must file a (~~quarterly~~) report of employees' (~~'s~~) wages with the commissioner. This report must list each employee by name, social security number, and total hours worked (~~;~~) and wages paid during that (~~calendar~~) quarter.

(i) Social security numbers are required for persons working in the United States:

(ii) If an individual has a social security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their social security card on the first day they are paid:

(iii) If the individual does not have a social security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a social security number within seven calendar days of starting work for the employer. The individual must

give the employer a document showing he or she has applied for a social security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her social security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file (~~(F)~~) the quarterly tax and wage reports (~~(must be filed)~~) in one of the following formats:

(i) Electronically, using the current version of UIFastTax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved (~~certified~~) version of those forms).

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. (~~Therefore~~) So, reports are due by April 30, July 31, October 31, and January 31, (~~respectively~~) in that order. If these dates fall on a Saturday, Sunday, or holiday, the reports will be due on the next business day. The commissioner must approve exceptions to the time and (~~manner~~) method of filing (~~(the report must be approved)~~) in advance (~~by the commissioner~~).

(e) Termination of business. Each employer who (~~ceases~~) stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due (~~(to)~~) on the date (~~(such)~~) the account is closed; and

(ii) A report of employees' (~~'s~~) wages for the current calendar quarter which includes all wages paid (~~(to)~~) as of the date (~~(such)~~) the account is closed.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-310-030 What are the (~~(R)~~) report (~~(s)~~) and tax payment (~~(s subject to)~~) penalties (~~(y)~~)? (1) **Penalty for (~~(F)~~) late tax reports. An employer who (~~files a tax report as described in WAC 192-310-010 (2)(a) but~~) does not file (~~(it)~~) a tax report within the time frame (~~(prescribed in)~~) required by WAC 192-310-010 (2)(c) (~~(is subject to)~~) must pay a penalty of twenty-five dollars (~~(per)~~) for each violation, unless the penalty is waived by the department.**

(2) **Definition of** (~~(F)~~) incomplete (~~(F)~~) tax (~~(R)~~) reports. An employer (~~(is required to)~~) must file (~~(the)~~) a tax report (~~(required by WAC 192-310-010 in a)~~) that is complete (~~(manner)~~) and in the format required by the commissioner.

(a) An "incomplete report" is (~~(defined as)~~) any report (~~(submitted by either a contributory or reimbursable)~~) filed by any employer or their agent where:

(i) The entire wage report is not (~~(submitted timely)~~) filed on time; or

(ii) A required element is not reported (social security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, ~~(such as, but not limited to,)~~ for example, missing social security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report ~~(-); or~~

(vi) The report includes duplicate social security numbers, or impossible social security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not ~~(submitted)~~ filed in the format required by the commissioner under WAC 192-310-010 ~~(2)(c)~~.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) Two to 19 employees and reports incomplete wage records for two or more employees; or

(ii) Twenty to 49 employees and reports incomplete wage records for three or more employees; or

(iii) Fifty or more employees and reports incomplete wage records for four or more employees.

(3) Penalty for filing an incomplete or incorrect format tax report. An employer who files an incomplete or incorrectly formatted tax and wage ~~(fails to file a)~~ report ~~(required by RCW 50.12.070)~~ will receive a warning letter for the first occurrence. For subsequent occurrences the employer ~~(is subject to)~~ must pay a penalty as follows:

(a) ~~(Incomplete tax report. The penalty for filing an incomplete tax report will be:)~~ Two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less.

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	1st Occurrence	\$75.00
(ii)	2nd Occurrence	\$150.00
(iii)	3rd and subsequent occurrences	\$250.00

~~((b) Filing tax report in an incorrect format. The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:~~

(i)	1st Occurrence	\$150.00
(ii)	2nd and subsequent occurrences	\$250.00

(4) Penalty for ~~(K)~~ knowingly misrepresenting amount of payroll. If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, (upon which contributions under this title are based,) the ~~(employer is liable for a)~~ penalty ~~((of))~~ is ten times the difference between the

~~((contributions))~~ taxes paid, if any, and the amount of ~~((con-~~ tributions)) taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer ~~((is))~~ must also ~~((liable to))~~ pay the department for the reasonable expenses of auditing his or her books and collecting ~~((such sums))~~ taxes and penalties due as provided in WAC 192-340-100.

~~(5) ((Report of employee's wages. Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.~~

~~(6)) ((Delinquent) Late tax payments. ((For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.)) All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:~~

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater;

(c) Third month: An additional 10 percent of total taxes due or \$10.00, whichever is greater; and

(d) Fourth month and every month following for the life of the delinquent debt: A total of 20 percent of total taxes due or \$10.00, whichever is greater.

~~((7))~~ **(6) Waivers of late filing and late payment Penalties (y-waivers).** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault. ~~((waive penalties in the following situations:))~~

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

~~((b))~~ (ii) The delinquency was ~~((due to an action of))~~ caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified ~~((or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time));~~

~~((c))~~ (iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

~~((d))~~ (v) The delinquency was caused by the accidental destruction of the employer's place of business or business records; ~~((e))~~

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

~~((e))~~ (b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department ~~((determines))~~ decides the employer made a good faith effort to comply with all applicable laws and rules~~(-); and~~

(c) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

~~((8))~~ (7) Incomplete reports or incorrect format penalty waivers. For good cause, the department may waive penalties for incomplete reports or reports in an incorrect format one time only when the employer can demonstrate making a good faith attempt to correct the problem in a timely manner after the department notified the employer of the problem.

~~((b))~~ (8) Missing and Impossible Social Security Numbers. When a social security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible social security numbers, but the employer can show that the impossible social security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing social security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid social security card or application for social security number within seven days of employment.

~~((9))~~ (9) Waiver requests. An employer must request ~~((for))~~ a waiver of penalties ~~((must be written))~~ in writing, ~~((contain))~~ include all ~~((pertinent))~~ relevant facts, ~~((be accompanied by))~~ attach available proof, and ~~((be filed through))~~ file the request with a tax office. In all cases the burden of proving the facts is on the employer.

~~((9))~~ (10) Extensions. The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax ~~((liability))~~ due for the reporting period or periods ~~((for which the extension is granted)).~~ This deposit will be ~~((credited to the employer's account and))~~ applied to the employer's debt. The amount of

the deposit ~~((is subject to approval))~~ must be approved by the department.

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.

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

NEW SECTION

WAC 192-320-005 What is "experience?"—RCW 50.29.021. As used in this chapter, the term "experience" includes matters that have a direct relation to the risk of unemployment. Any benefits paid that are based on wages paid by the employer and chargeable under RCW 50.29.020 are considered experience.

NEW SECTION

WAC 192-320-010 When is experience transferred to a successor employer?. (1) Any benefits paid which are based on wages paid by the predecessor employer before the transfer of ownership must be charged to the successor employer. Just as the successor employer gets the organization, trade, business, assets, and experience of a predecessor employer as of the date of transfer, it must also get the benefit charges for past, current, or future claims connected to the predecessor employer (or a part of the predecessor employer that can be singled out) prior to the transfer.

(2) Once experience has been transferred, it becomes the successor employer's experience. It must be used to decide the successor's rates for any rate year that follows the year in which the transfer occurs. (There is an exception when, following the transfer, the successor does not have enough experience to be a qualified employer under RCW 50.29.010(6).) Since the transferred experience belongs to the successor employer, it may no longer be used to compute rates for the predecessor employer for rate years that follow.

Reviser's note: The typographical 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 192-320-020 How is the of industry average calculated?—RCW 50.29.025. (1) As used in this title:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. It will be referred to as the "experience tax."

(c) "Industry average graduated social cost factor rate" is the average social tax rate for a particular industry. It will be referred to as the "social tax."

(2) When calculating the experience tax and social tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(3) **Experience tax.** (a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, we will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) We will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(4) **Social tax.** (a) The department will calculate the social tax as follows:

(i) The experience tax table will show the percentage of the social tax assigned to each of the 40 rate classes;

(ii) We will multiply, total, and display the total payroll in each industry rate class by the percentage of social tax assigned to that rate class;

(iii) We will total the social tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The social tax for an industry cannot be higher than the percentage of social tax assigned to rate class 40.

(5) If there are no qualified employers in the four digit level of the NAICS code, we will calculate the rates using the corresponding three digit level and assign the result to the four digit level. If there are no qualified employers in the three digit level, we will calculate the rates using the corresponding two digit level and assign the result to both the three and four digit levels.

AMENDATORY SECTION (Amending WSR 00-05-068, filed 2/15/00, effective 3/17/00)

WAC 192-320-050 What are the ~~(R)~~ requirements of partial successors~~(—)~~ under chapter 50.29 RCW~~2~~(:)

(1) If you are a partial successor, both you and the predecessor employer must return the partial transfer of experience letter provided to you by the department within thirty days of the mailing date. Your response must ~~((indicate))~~ show the percentage of operating assets transferred to you as the partial successor. Operating assets include the employees of the business.

(2) If you ~~((do not return the letter within thirty days,))~~ are an employer at the time of the transfer, you will keep your existing rate class for the rest of the current rate year. If you are not an employer when you acquire the predecessor's business, you will keep the ~~((tax))~~ rate class that was assigned to the predecessor employer for the ~~((remainder))~~ rest of the rate year. ~~((However, in the following calendar year you will receive the average industry rate. You will keep this rate until you qualify for a different rate in your own right.))~~

(3) If you do not respond, for subsequent rate years the commissioner will estimate the percentage of employees

transferred based on employment reports filed. That percentage will transfer to the successor until it provides compelling evidence to change the estimate.

(4) Changes in rate class are effective for the rate year the information was provided and for subsequent rate years only.

NEW SECTION

WAC 192-320-051 What are the requirements of partial predecessors under chapter 50.29 RCW. (1) If you are a partial predecessor, both you and the successor employer must return the partial transfer of experience letter provided to you by the department within thirty days of the mailing date. Your response must show the percentage of operating assets transferred by you as the partial predecessor. Operating assets include the employees of the business.

(2) If you do not return the letter within thirty days, you will keep your existing rate class for the remainder of the current rate year.

(3) If you do not respond, for subsequent rate years the commissioner will estimate the percentage of employees transferred based on employment reports filed. That percentage will transfer to the successor until compelling evidence is provided to change the estimate.

(4) Changes in rate class are effective for the rate year the information was provided and for subsequent rate years only.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-320-060	Delinquent predecessor taxes.
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WSR 05-19-018

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 9, 2005, 2:59 p.m., effective October 10, 2005]

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

Purpose: The rules clarify those sections of 2ESB 6097 pertaining to unemployment benefits that took effect in 2005. New rules are adopted to define terms and clarify the job search requirements of partially unemployed and part-time workers. The rule on standby is amended to eliminate references to partially unemployed workers and to incorporate the department's longstanding policies related to workers on standby.

Citation of Existing Rules Affected by this Order:
Amending WAC 192-110-015.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.12.042.

Adopted under notice filed as WSR 05-13-158 on June 21, 2005.

Changes Other than Editing from Proposed to Adopted
Version: WAC 192-180-013 (1)(d) was changed from six to

four months in response to stakeholder concerns. A number of wording changes were made to comply with Executive Order 05-03, Plain talk.

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 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 3, Amended 1, Repealed 0.

Date Adopted: August 31, 2005.

Karen T. Lee
Commissioner

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-110-015 Applications by ~~((partially unem-~~
~~ployed or))~~ standby workers—RCW ((50.04.310,))
50.20.010~~((and 50.20.130))~~. (1) ((Definitions:**

(a) "Employer" means any person or business for which you work in exchange for wages.

(b) "Partially unemployed" means that during a week:

(i) You worked for your regular employer less than full time because of lack of work; and

(ii) You earned less than one and one-third times your weekly benefit amount plus five dollars.

(e)) **What is "standby?"** "Standby" means you are temporarily unemployed ~~((due to))~~ because of a lack of work but you expect to return to work with your regular employer. You do not have to register for work or look for other work while you are on standby. You must be available for all hours of work offered by your regular employer.

(2) ((Your rights when you are partially unemployed:

(a) You may file your application or claim for benefits as many as five weeks after your hours are reduced without it being considered late.

(b) You do not have to register for work, however, you must accept all hours offered by your regular employer.

(3) Your rights when you are on)) **How long can I be on standby?((+))**

(a) You can ask to be on standby for up to four weeks.

(b) ((You do not have to register for work.

(e)) We will ask your employer to verify that you are on standby and your expected return to work date:

(i) If your employer does not ~~((respond))~~ reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby for up to four weeks or until the return to work date given by your employer, whichever is earlier;

(iii) If your employer ~~((responds))~~ replies that you are not on standby or do not have a return to work date within eight weeks, we will require you ~~((will be required))~~ to immediately register for work and to look for work.

~~((+))~~ (c) Your regular employer ~~((must))~~ may ask ~~((request))~~ to extend your standby status for more than four, but no more than eight, weeks (except as provided in (2)(d) below). This request ~~((is subject to approval))~~ must be approved by the department. We will consider the following before deciding whether to ~~((extend))~~ approve standby ~~((status))~~ for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At his or her discretion, the commissioner may grant standby for more than eight weeks in a benefit year. The employer must apply in writing and show there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a bona fide job with a new employer that has a definite start date within four weeks. The job must be in employment covered by Title 50 RCW or the comparable laws of another state or the federal government.

(3) Are there conditions apply to a request for standby?

(a) You must have a definite date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with the employer, a promise of more work at some unspecified date, or when the return to work date depends on conditions beyond the employer's control, such as weather;

(c) Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work fewer than forty hours each week for the employer; and

(d) Except as provided in subsection (2)(d), we will not approve standby for more than eight weeks in any benefit year. Any week(s) that you do not qualify for benefits because of your earnings will not be considered as part of the eight weeks. After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer.

Reviser's note: The typographical 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 192-110-017 When can a partially unemployed worker apply for benefits?—RCW 50.04.310. If you are a partially unemployed worker as defined in WAC 192-180-013, you may apply for unemployment benefits up to five weeks after your hours are reduced without the application being considered late.

NEW SECTION**WAC 192-170-070 What are the availability requirements for part-time eligible workers?—RCW 50.20.119.**

(1) If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job of 18 or more hours per week.

(2) You must be available for work during the usual hours for your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must be available for work all days of the week that are usual for your occupation, even if you have not worked those days in the past. If you are not available for work on any day that is a usual day of work for your occupation, we will reduce your benefits under RCW 50.20.130. For example, if your occupation usually works Monday through Friday, you must be available for work Monday through Friday, even if you have only worked weekends in the past.

NEW SECTION**WAC 192-180-013 What are the job search requirements for individuals who work less than full-time. (1) "Partially unemployed" workers are those individuals:**

- (a) Who were hired to work full time,
- (b) Whose weekly hours of work have been temporarily reduced to less than full time by their employer,
- (c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week, and
- (d) Who are expected to return to full time work for their employer within four months.

These workers are considered to be employer attached and are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) **"Part time"** workers are individuals who normally work less than full time, or who take a job that is less than full time. To be eligible for benefits, these individuals must be available for and actively seeking full time work and the department may review their job search at any time. If they get a part time job, they must continue to look for full time work or we will deny their benefits under RCW 50.20.010 (1)(c). This definition of "part time" workers means individuals who work part time but do not meet the requirements of RCW 50.20.119.

(3) **"Part time eligible"** workers are individuals who have worked no more than 17 hours in any week of their base year. They are eligible for benefits under RCW 50.20.119. These individuals may look for work of 17 or fewer hours per week and the department may review their job search at any time. Once an individual gets a job for 17 or fewer hours per week, he or she is employer attached and no longer required to look for work.

WSR 05-19-019
PERMANENT RULES
GAMBLING COMMISSION

[Order 451—Filed September 9, 2005, 3:56 p.m., effective October 10, 2005]

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

Purpose: The commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors. The commission received over one hundred written letters regarding this proposed rule change. Additionally, numerous members of the industry have testified at three commission meetings regarding whether they supported or opposed the changes. The following amendments were adopted regarding how distributors and creditors handle credit and pricing: (1) Pricing and credit restrictions between manufacturers and distributors has been removed; (2) manufacturers will no longer notify other manufacturers or the commission when a distributor is delinquent on an account; (3) gifts between manufacturers, distributors and operators as incentives to purchase products are now allowed; (4) operators and distributors may now use credit cards to make purchases, including purchases of gambling equipment; (5) operators may use credit for leases, rentals and license agreements; and (6) NSF checks will be handled between distributors or manufacturers and the commission will not get involved in the matter.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-12-320, 230-12-330, and 230-12-345; and amending WAC 230-12-340 and 230-12-350.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 05-13-116 on June 20, 2005, with a published date of July 6, 2005.

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 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 3.

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 3.

Date Adopted: September 9, 2005.

Susan Arland
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-12-320	Manufacture and distribution of gambling equipment and
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services—Prohibited practices—Gifts, promotional activities, and loans—Exceptions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-12-330	Availability of gambling equipment and related products and services—Prices—Contracts—Discounts—Restrictions—Exceptions.
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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-12-345	Leases, rentals, and license agreements—Requirements—Restrictions.
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AMENDATORY SECTION (Amending Order 411, filed 4/18/02, effective 7/1/02)

WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—~~((Credit prohibited—Exceptions))~~ **Authorized transactions.** ~~((The use of))~~ Manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services ((is prohibited. Except as authorized by this section.)). Manufacturers and distributors must conduct all sales of such ((shall be transacted)) to operators on a cash basis. ((The following definitions, restrictions, and procedures apply to this section.)) **"Cash basis"** means full payment is received by the seller on or before actual delivery of the product or service to the purchaser.

Capital leases.

(1) All licensed manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:

(a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;

(b) The term of the contract does not exceed forty-eight months;

(c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;

(d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;

(e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;

(f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and

(g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.

~~((Definitions.))~~ **Rental or license agreements.**

~~((The following definitions only apply to subsections (3) through (9) of this section:~~

~~((a) "Manufacturers and distributors" refers only to the manufacturers and distributors of pull-tabs, punch boards, and bingo supplies.~~

~~((b) A "cash basis" means full payment is received by the seller on or before actual delivery of the product or service to the purchaser;~~

~~((c) A "trade account" is a payment system that allows distributors to place orders for inventory or services from manufacturers or distributors and to make payment for such within a specific period of time after shipment of the product or completion of the service;~~

~~((d) "Prescribed time period" is the maximum period of time a distributor has to pay for purchases of goods or services made under trade account terms prior to being restricted to cash basis terms. The time period begins when a product is shipped or service completed and ends on the date payment is actually delivered to the manufacturer or distributor, or if delivered by the U.S. mail, the U.S. postmark date of the envelope containing the payment. For purposes of this section, prescribed time period means no later than sixty days after shipment of the products or completion of the services.~~

Authorized transactions.

~~((3))~~ For purposes of this WAC title, the following transactions are authorized and shall not be deemed as credit or loans of money when applicable requirements are met:

~~((a))~~ Except for punch boards, pull-tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices, manufacturers and distributors may lease or rent gambling equipment to operators. Manufacturers may also enter into license agreements with operators for use of the manufacturer's patented, copyrighted, or trademarked games.

(3) Manufacturers and distributors may only base fee structures for electronic bingo equipment on the number of times a device is used or the number of bingo sessions in which devices are used. Fees must not be determined by a percentage of sales, the number of bingo cards sold through the device, or the average amount a player spends on a device.

Check or credit card purchases.

(4) Operators may purchase((s-ef)) goods and services from manufacturers or distributors when paid for by checks, or credit card issued by a state and/or federally regulated

financial institution that meet the requirements of WAC 230-12-350(;

(b) Purchases of goods or services by distributors from manufacturers or other distributors when utilizing trade account terms and the requirements of subsection (4) of this section are followed;

(c) Promissory notes between manufacturers and distributors for payment of debts incurred prior to the effective date of this section;

(d) Purchases made under capital lease agreements when the requirements of this section are followed;

(e)).

Exceptions.

(5) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;

~~((f))~~ (6) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product. (If the distributor or manufacturer does not receive payment within thirty days, they must immediately restrict the licensee to sales on a cash on delivery basis until payment is received. Licensees paying for bingo supplies on terms other than a cash basis must document on the purchase invoice the date paid and the check number; and

(g) The sales of nongambling equipment, fixtures, supplies, or commodities to licensees are exempt from all provisions of this section when the requirements of WAC 230-12-330 are met.

Trade account conditions.

(4) Manufacturers and distributors may allow distributors to establish "trade accounts" to purchase gambling-related inventory or services without making immediate payment under the following conditions:

(a) Trade account terms, if offered to any distributor, shall be made available to all distributors without discrimination. Provided, That trade accounts may be restricted to distributors that:

(i) Meet objective credit criterion established by a manufacturer or distributor. Such criterion must be in writing, available to the commission for review, and provided to any distributor upon request. A manufacturer or distributor may include a distributor's payment history as a part of the trade account approval criterion;

(ii) Meet minimum purchase requirements established by the manufacturer. Provided, That the minimum purchase requirement shall not be greater than five hundred dollars per transaction;

(b) Trade account terms shall not allow a manufacturer or distributor to gain any ownership or financial interest in a licensee. This section is not intended to prohibit or restrict a manufacturer or distributor from gaining a security interest in inventory sold for credit, as authorized by the Uniform Commercial Code. Provided, That this section shall not allow a

manufacturer to obtain an interest in inventory sold by any other manufacturer under trade account terms;

(e) A distributor shall make full payment for all goods or services purchased under trade account terms within the prescribed time period. Failure to pay within the prescribed time period may be deemed solicitation of credit by the distributor.

Procedures for past due accounts -- notification and sales restrictions.

(5) When a distributor fails to pay for goods or services purchased under trade account terms within the prescribed time period, the creditor manufacturer or distributor shall comply with the procedures set forth below. Failure to comply with these procedures may result in the manufacturer or distributor being deemed to have extended credit to the distributor. The following procedures must be followed when a distributor fails to make required payments:

(a) Notify the delinquent distributor of failure to pay by telephone no later than the end of the next business day;

(b) Restrict sales of all goods and services to the delinquent distributor no later than the end of the third business day after the default. Provided, That sales may be made to a delinquent distributor on a cash basis only;

(c) Notify the commission and all licensed manufacturers and distributors in writing by letter, facsimile or e-mail no later than the end of the fifth business day after default. Written notification shall include at least the following:

(i) The distributor's name;

(ii) The invoice or shipping order numbers involved in the transaction;

(iii) The date the item was shipped or service was provided; and

(iv) Any other information requested by the commission.

Cash only sales to delinquent distributors.

(6) Upon receipt of notification from the manufacturer that a distributor has a delinquent account, manufacturers and distributors shall immediately cease sales, shipments of products, and providing services to the delinquent distributor on other than a cash basis.

Notification of payment on past due accounts.

(7) The manufacturer shall notify the commission and all manufacturers and distributors in writing by letter, facsimile or e-mail, no later than the next business day after receiving payment from the delinquent distributor for the outstanding account. Trade account sales may then resume with all manufacturers.

(8) The distributor that was placed on a credit hold shall notify the commission in writing by letter, facsimile or e-mail, no later than the next business day after payment has been made to the manufacturer in which they were delinquent.

Failure to pay promissory notes.

(9) A creditor manufacturer or distributor shall immediately notify the commission if a distributor fails to abide by the terms of the promissory note and the process being pursued to correct the situation.)

AMENDATORY SECTION (Amending WSR 97-20-026, filed 9/22/97, effective 1/1/98)

WAC 230-12-350 Use of checks and credit cards to purchase gambling equipment, products, and services—Restrictions. Checks and credit cards may be used by licensed operators and distributors to purchase gambling equipment, devices, related supplies or paraphernalia, and services in lieu of cash under the following conditions:

~~((What are the restrictions on checks utilized for payment of gambling products or services?))~~

(1) Checks and credit cards must be drawn on the licensee's business account. Provided, That personal checks and credit cards drawn on the account of an owner, partner, or officer or substantial interest holder of a corporate licensee may be accepted.

(2) Checks received by distributors from operators must be negotiable and dated on or before the delivery date of the product or service. Checks shall not be postdated.

~~((When must a check be deposited?))~~

(3) Checks shall not be held and must be presented for payment at the manufacturer's or distributor's bank within the prescribed time frames. Failure to present checks within the prescribed time period shall be prima facie evidence of extension of credit to the drawer licensee by the manufacturer or distributor. Prescribed time frames are as follows:

(a) Checks received from operators shall be deposited within ten calendar days after the date the product or service was delivered; and

(b) Checks received from distributors shall be deposited within ten days of the date received or, if delivered by mail, thirteen days from the postmark of the envelope containing the payment.

~~((What are the procedures for handling a dishonored check presented to a distributor by an operator?))~~

~~(4) Checks from licensed operators that are initially returned by a bank for lack of sufficient funds may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the distributor shall:~~

~~(a) Deliver dishonored checks to an owner, manager, or officer of the licensee within seven banking days after return from the bank and demand payment in cash. If unable to deliver such checks to an owner, manager, or officer of the licensee within seven days, the distributor shall notify the commission; and~~

~~(b) Upon being presented with a check returned by the bank, licensees shall immediately replace such check with cash or a cash equivalent such as a money order, certified check, or other guaranteed negotiable instrument; or~~

~~(c) Failure of an operator to replace a check returned by a distributor with cash or a cash equivalent shall be prima facie evidence of solicitation of credit and must be reported to the commission by the distributor within seven days.~~

~~**What are the procedures for handling a dishonored check presented to a manufacturer or distributor by a distributor?**~~

~~(5) Checks from distributors that are initially returned by a bank for lack of sufficient funds shall be processed by manufacturers or distributors using the following procedures:~~

~~(a) Checks received for payment for a prepaid or COD transaction may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the manufacturer or distributor shall:~~

~~(i) Contact an owner, manager, or officer of the distributor within seven banking days by telephone or facsimile and demand payment by a certified check, postal money order, or other cash equivalent. If unable to contact an owner, manager, or officer within seven days, the manufacturer shall notify the commission;~~

~~(ii) Upon receipt of a cash equivalent to replace the dishonored check, the manufacturer or distributor shall return the check to the distributor by mail;~~

~~(iii) If a distributor that is presented a dishonored check does not immediately replace such check, the manufacturer or distributor shall cease all sales to the distributor and notify the commission within seven days. Failure to replace a dishonored check with cash or cash equivalent shall be prima facie evidence of solicitation of credit by the distributor.~~

~~(b) If payment is for a transaction completed with trade account terms, the manufacturer:~~

~~(i) May deposit the check again if the prescribed time period for payment has not passed; or~~

~~(ii) May contact an owner, manager, or officer of the distributor by telephone or facsimile and demand payment by a cash equivalent such as a certified check or postal money order;~~

~~(iii) If the bank clears the check or payment is otherwise received prior to the prescribed time period for payment, no further action is required; and~~

~~(iv) If the prescribed time period for payment has passed and the dishonored check is not replaced prior to such, the manufacturer shall comply with the procedures set forth in WAC 230-12-340 for failure to make timely payment under trade account terms.))~~

WSR 05-19-020

PERMANENT RULES

GAMBLING COMMISSION

[Order 450—Filed September 9, 2005, 3:57 p.m., effective October 10, 2005]

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

Purpose: The commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by simplifying raffle regulations. Requirements for selling raffle tickets at a discount or selecting winners using an alternative drawing format are now incorporated into the rules. As such, staff will no longer review and provide written approval for raffles that offer discounts or draw tickets using an alternative drawing format.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-325 and 230-20-335.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0315, 9.46.0321.

Adopted under notice filed as WSR 05-13-115 on June 20, 2005, with a published date of July 6, 2005.

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

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

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

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

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

Date Adopted: September 9, 2005.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-23-054, filed 11/20/01, effective 1/1/02)

WAC 230-20-325 Manner of conducting a raffle.

((Only charitable and nonprofit organizations may conduct a raffle. All raffles, except as authorized in WAC 230-02-335 (members-only raffles), shall be conducted utilizing the following operating procedures:

~~Price per ticket — maximum \$25.~~

(1) Each raffle ticket may not be sold for more than twenty-five dollars. Every raffle ticket for a particular raffle must be sold for the same price: Provided, That tickets may be bundled together and sold at a discount, as authorized by subsection (2) of this section.

~~Discount schemes for tickets.~~

(2) The director may authorize a raffle licensee to sell tickets at a discount when the following requirements are met:

License required.

(a) The organization must have a current Class E or higher raffle license: Provided, That Class C or Class D raffle licensees may offer discounted tickets if all recordkeeping requirements of WAC 230-08-070 are followed.

Request for approval.

(b) A request for approval of discounted sales must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. The request for approval shall include, at a minimum, the following information:

- (i) A full description of the discount scheme;
- (ii) The account controls and records that will be used; and
- (iii) A copy of a raffle ticket and the booklet cover to be used in the raffle.

Subsequent discount schemes.

(e) After a licensee has received approval for a discount scheme, the licensee may utilize the identical discount scheme in subsequent raffles, unless approval is rescinded or commission rules change.

Cost of approval.

(d) The licensee shall reimburse the commission for costs incurred to review discount schemes: Provided, That the licensee will not be charged for the first two hours of service (WAC 230-12-315).

Amount of discount.

(e) Only one discount scheme is allowed for each raffle. The amount of the discount must be set prior to selling any raffle tickets and must not be changed during the raffle.

Bundling tickets.

(f) Raffle tickets bundled to be sold at a discount must meet the following requirements:

- (i) Discounted tickets must be bundled into booklets that contain the number of tickets set forth in the approved scheme. For example, if single tickets are sold for five dollars each, the discount scheme may allow three tickets to be bundled together and sold for ten dollars;
- (ii) Tickets bundled into booklets shall not be removed from the booklet and sold individually; and
- (iii) The cover of each ticket booklet shall be imprinted with the following:
 - (A) A description of the sales scheme;
 - (B) The number of tickets in the booklet;
 - (C) The total cost of the booklet; and
 - (D) A control number that meets the requirements of subsection (3) of this section.

Accounting.

(g) Accounting procedures must be established and provide controls necessary to allow commission staff the ability to audit gross gambling receipts from ticket sales.

~~Numbering of tickets.~~

(3) To provide an adequate audit trail, all raffle tickets shall be:

- (a) Consecutively numbered; or
- (b) Imprinted with letters or symbols which are not repeated within the population of all tickets sold for a particular raffle.

~~Purchasing tickets.~~

(4) No person shall be required to purchase more than one raffle ticket.

~~No free tickets or chances to win.~~

(5) Free tickets, or an opportunity to participate in a raffle drawing without purchasing a ticket, are not allowed for any reason, including, but not limited to, the following:

- (a) Awarded or given away as a prize;
- (b) For purchasing a certain number of raffle tickets; or
- (c) As a reward for selling raffle tickets.

Ticket stub information.

(6) Raffle tickets sold to the general public or for raffles that do not require the winner to be present at the drawing shall include a stub or other detachable section bearing a duplicate number, letter, or symbol corresponding to the number, letter, or symbol on the ticket or object representing the player's chance. The portion retained by the raffle operator shall include the participant's name, complete address, telephone number, and/or other information necessary to notify the winner.

Ticket stubs to be placed in receptacle for drawing.

(7) Each person that sells a raffle ticket shall give the raffle licensee all ticket stubs or other detachable section of all tickets sold. The licensee shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets will be drawn.

Drawing the winning tickets.

(8) The ticket collection receptacle shall be designed so that each ticket has an equal opportunity to be drawn. Provided, That an alternative drawing format to determine the winners may be utilized, as authorized by subsection (9) of this section.

Alternative drawing format.

(9) The director may authorize a raffle licensee to determine the winners utilizing an alternative drawing format when the following requirements are met:

License required.

(a) The organization must have a current raffle license.

Request for approval.

(b) A request for approval for an alternative drawing format must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. The request shall include, at a minimum, the following information:

- (i) The type of random selection process to be used and complete details of its operation;
- (ii) The name and telephone number of the raffle manager; and
- (iii) The signature of the organization's chief executive officer.

Subsequent alternative drawing formats.

(c) After a licensee has received approval to utilize an alternative drawing format, the licensee may utilize the identical drawing format in subsequent raffles, unless approval is rescinded or commission rules change.

Cost of approval.

(d) The licensee shall reimburse the commission for costs incurred to review alternative drawing formats. Provided, That the licensee will not be charged for the first two hours of service (WAC 230-12-315).

Additional requirements.

(e) The alternate drawing format must meet the definition of a drawing as defined by WAC 230-02-500;

(f) The random selection process used in the alternative format shall be fully disclosed to each player prior to selling a ticket; and

(g) The alternate drawing format must be closely controlled by the licensee.

Selling tickets.*Members only to sell—exception.*

(10) Tickets must be sold by members of the organization or volunteers under the supervision of a member under the requirements set forth in WAC 230-20-070(1).

Compensation or incentives for sales.

(11) Members shall not be paid for selling tickets, managing or operating a raffle. Provided, That nonecash incentive awards may be provided to members for selling tickets if the following requirements are met:

- (a) Individual awards do not exceed a fair market value of ten dollars;
- (b) The awards are based on the number of chances sold; and

(c) The fair market value of the total amount awarded for an individual raffle does not exceed two percent of the gross gambling receipts of the raffle.

Prizes.

(12) Prizes must be owned by the organization conducting the raffle prior to drawing the winning tickets. Raffle prizes must meet the following requirements:

(a) Firearms shall not be awarded as prizes. Provided, That a raffle licensee may award firearms as prizes under the provisions set forth in WAC 230-12-040;

(b) Liquor shall not be awarded as prizes. Provided, That unopened containers of liquor may be awarded as a prize in members only raffles when the proper permit is obtained from the liquor control board (RCW 9.46.0315 and WAC 230-20-335);

(c) The amount of money spent on prizes must meet the requirements set forth in WAC 230-20-015; and

(d) Prizes shall be controlled as set forth in WAC 230-20-300.

Rules must be provided to participants.

(13) All participants in a raffle must be informed of all rules by which prizes may be won at the time the ticket is purchased. This information shall be provided by either imprinting such on the participant's portion of the ticket or otherwise providing such to each participant in writing.

The following information shall be provided to each participant:

- (a) The cost of each chance;
- (b) All prizes available, whether cash or merchandise;
- (c) Date and time of drawing;
- (d) Location of drawing;
- (e) Whether an entrant is required to be present at a raffle drawing in order to be eligible to win a prize; and

~~(f) Name of organization conducting the raffle.~~

Posting the raffle license.

~~(14) The raffle license or a copy of the license must be posted in a location readily visible by all raffle participants during the entire time the drawing of winners is being conducted.~~

Joint raffles.

~~(15) Raffle licensees may join together to conduct a raffle when the provisions set forth in WAC 230-20-350 are met.~~

Members only raffles.

~~(16) Organizations may conduct members only raffles under simplified procedures set forth in WAC 230-20-335.)) Only licensed charitable and nonprofit organizations may operate raffles under the following conditions: Raffle tickets must be sold for twenty-five dollars or less. No person shall be required to purchase more than one raffle ticket. Every ticket for a particular raffle must be sold for the same price. However, tickets may be offered at a discount under the following conditions:~~

Bundling and selling tickets at a discount.

~~(1) Organizations may put tickets together in a bundle and sell them at a discount if the organization:~~

~~(a) Has a current raffle license;~~

~~(b) Sets the discount before selling any raffle tickets and does not change the discount plan during the raffle;~~

~~(c) Keeps records that meet all commission requirements;~~

~~(d) Makes single nondiscounted tickets available to all participants; and~~

~~(e) Uses only one discount plan for each raffle.~~

~~(2) Booklets of bundled discounted tickets must contain the number of tickets set forth in the discount plan. For example, a single ticket is sold for five dollars each and three tickets bundled together are sold for ten dollars.~~

~~(3) Bundled tickets cannot be removed from a booklet and sold individually. Each booklet of bundled tickets must have the following information printed on the cover:~~

~~(a) A description of the discount plan;~~

~~(b) The number of tickets in the booklet;~~

~~(c) The total cost of the booklet; and~~

~~(d) A consecutive number.~~

Ticket accounting.

~~(4) Organizations must establish accounting procedures and provide controls necessary to allow for an audit of gross gambling receipts from ticket sales. To provide an adequate audit trail, all raffle tickets must:~~

~~(a) Be consecutively numbered; or~~

~~(b) Be imprinted with letters or symbols which are not repeated within the population of all tickets sold for a particular raffle.~~

No free tickets.

~~(5) Organizations must not give raffle tickets away for free and no one can be given an opportunity to participate in a raffle drawing without purchasing a ticket.~~

Selling tickets.

~~(6) Organizations must not sell raffle tickets via the internet.~~

~~(7) Tickets must be sold by members of the organization or volunteers under the supervision of a member under the requirements set forth in WAC 230-20-070(1).~~

Incentives for selling tickets.

~~(8) Members or volunteers of the organization must not be paid for selling tickets, managing, or operating a raffle. Organizations may provide members or volunteers with non-cash incentive awards for selling tickets if:~~

~~(a) The awards are based on the number of chances sold;~~

~~(b) The fair market value of the total amount awarded for an individual raffle does not exceed five percent of the gross gambling receipts of the raffle; and~~

~~(c) A record of the name, address, and telephone number is maintained for all persons receiving incentive awards.~~

Rules must be provided to participants.

~~(9) Organizations must inform all participants at the time a ticket is purchased of all rules by which prizes may be won in a raffle. This information must be provided by either imprinting such on the participant's portion of the ticket or otherwise providing such to each participant in writing. Organizations must give each participant the following information:~~

~~(a) The cost of each chance;~~

~~(b) All prizes available, whether cash or merchandise;~~

~~(c) Date and time of drawing;~~

~~(d) Location of drawing;~~

~~(e) Whether an entrant is required to be present at a raffle drawing in order to be eligible to win a prize; and~~

~~(f) Name of organization conducting the raffle.~~

Posting the raffle license.

~~(10) The raffle license or a copy of the license must be posted in a readily visible location at the site of the drawing.~~

Ticket stub information.

~~(11) If organizations sell raffle tickets to the general public or for raffles that do not require the winner to be present at the drawing, the organization must include a stub or other detachable section bearing a duplicate number, letter, or symbol corresponding to the number, letter, or symbol on the ticket or object representing the player's chance. The portion kept by the organization must include the participant's name, complete address, telephone number, and/or other information necessary to notify the winner.~~

Ticket stubs to be placed in receptacle for drawing.

~~(12) Each person that sells a raffle ticket must give the organization all ticket stubs or other detachable section of all tickets sold. The organization must place each stub or other~~

detachable section of each ticket sold into a receptacle from which the winning tickets will be drawn.

Prizes.

(13) Organizations must own the prizes before drawing the winning tickets. Raffle prizes must:

(a) Not be firearms, unless awarded as prizes under the provisions set forth in WAC 230-12-040;

(b) Not be liquor;

(c) Meet the requirements to the amount of money spent on prizes set forth in WAC 230-20-015; and

(d) Be controlled as set forth in WAC 230-20-300.

Drawing winning tickets.

(14) Organizations must design the ticket collection receptacle so that each ticket has an equal opportunity to be drawn unless the organization is using an authorized alternative drawing format.

Using alternative drawing formats.

(15) Organizations may use an alternative drawing format that randomly determines winners when the organization:

(a) Has a current raffle license;

(b) Maintains records sufficient to meet all requirements of WAC 230-08-070 regardless of license class;

(c) Meets the definition of a drawing as defined by WAC 230-02-500 with the alternate drawing format;

(d) Fully discloses to each player the random selection process used in the alternative format before selling tickets;

(e) Maintains a copy of the disclosure with the permanent raffle records;

(f) Ensures all participants have an equal chance of winning; and

(g) Uses raffle tickets that are prenumbered and sequential.

(16) Alternative formats involving an element of skill are prohibited.

(17) Internal controls and accounting procedures must:

(a) Provide the ability to audit gross gambling receipts from ticket sales;

(b) Have sufficient controls to prevent manipulation of the random selection process; and

(c) Document the random selection process.

Alternative drawing formats.

(18) Organizations can only conduct alternative drawings for raffles that meet the criteria outlined in subsections (15), (16) and (17) of this section. The following are examples of alternative drawing formats that meet this criteria.

Mock raffle races.

(a) Sequentially numbered and issued tickets/adoption papers are numbered to identify a specific corresponding numbered mock animal(s), ball(s), or other similar objects that can be raced using natural elements to move the objects (water, gravity, wind). Objects must be released simultaneously at a start line. The winner will be the numbered object to first cross the finish line. All objects must be iden-

tical in weight, size, and shape, to have an equal opportunity to win.

Poker runs.

(b) Sequentially numbered and issued tickets/poker tally sheets are sold to participants. Participants will travel a predetermined course with predetermined drawing stations (typically five drawing stations). At each drawing station, the participant will draw one playing card for each ticket purchased. Station attendants will verify the card drawn and will record the card value on the poker ticket tally sheet. After all participants have completed the course, the best recorded poker hand will be declared the winner.

Ball drops.

(c) Sequentially numbered and issued tickets are numbered to identify a specific corresponding numbered ball. All purchased numbered balls will be suspended in air and simultaneously released over a target zone. The ball, closest or first, to hit the predetermined target will be declared the winner. All balls must be equal in size, weight, and shape, to have an equal opportunity to win.

Animal plops.

(d) Sequentially numbered and issued tickets are numbered to identify a specific corresponding square on a numbered grid. The animal of choice will be released into the grid area until the animal has completed its plop. The numbered square containing the plop will determine the winner.

Multiple stage drawings.

(e) Tickets or objects are sequentially numbered and issued. Winners will be determined using multiple drawing phases to eliminate participants until the remaining ticket holder(s) are declared the winner. Second element chance plans are allowed as long as they meet the criteria set out in this rule.

Bucket raffles.

(f) Tickets are sequentially numbered and issued. Participants are allowed to place their tickets into any number of separate drawings for separate prizes. The multiple drawings are considered one single raffle unless the organization uses different numbered tickets for each drawing.

Calendar raffle.

(g) Calendars are sequentially numbered and issued. All sold calendar numbers are entered into the drawing receptacle. On predetermined dates, identified on the calendar, drawings will be conducted. All winning tickets must be replaced into the drawing receptacle for future drawings.

Using a second element of chance.

(19) Organizations may use second elements of chance to:

(a) Determine the final prize winner (for example: Ten finalists are drawn and each finalist will choose a key. The finalist with the key that unlocks the safe wins);

(b) Determine which prize is awarded among a group of prizes (for example: The winner selects one of three keys and wins the vehicle the key starts);

(c) Increase the prize (for example: The winning ticket matches a predetermined sequence of numbers and wins an additional prize).

(20) All aspects of the alternate drawing format must be closely controlled by the licensee.

Joint raffles.

(21) Organizations holding a raffle license may join together with another raffle licensee to conduct a raffle when the provisions set forth in WAC 230-20-350 are followed.

Members-only raffles.

(22) Organizations may conduct members-only raffles under simplified procedures set forth in WAC 230-20-335.

AMENDATORY SECTION (Amending Order 443, filed 3/18/05, effective 7/1/05)

WAC 230-20-335 Members-only raffles—Procedures—Restrictions. ~~((Organizations may conduct members-only raffles utilizing simplified procedures. For purposes of this section, "members-only raffle" means a raffle conducted by selling chances only to members of the organization and a limited number of guests, and determining the winners from among those members and guests that have purchased chances. The following procedures and restrictions supplement or modify WAC 230-08-070 and 230-20-325 and apply only to members-only raffles:~~

~~Licensed versus unlicensed.~~

~~(1) An organization may conduct an unlimited number of unlicensed members-only raffles if the combined gross revenue from the raffles does not exceed five thousand dollars during a calendar year. If the organization plans to exceed the five thousand dollar gross receipts limit, it must obtain a raffle license.~~

~~Raffle to begin and end during membership meeting.~~

~~(2) In order to conduct raffles utilizing these simplified procedures, all phases of the raffle must be completed during a meeting of the members, and the meeting must be completed on the same day and at the same location without interruption;~~

~~Limit on number of guests.~~

~~(3) If guests are allowed to participate, the total number of guests, as a percentage of the total attendance of the meeting, shall not exceed twenty-five percent. Records shall be maintained that will allow commission staff to determine compliance with this requirement;~~

~~Rules of play.~~

~~(4) All disclosures required to be imprinted on a raffle ticket or chance may be provided to participants by posting a sign at each ticket sales point;~~

~~Tickets.~~

~~(5) Chances to enter a raffle may be included as a part of a package that includes dues, entertainment, or other fundraising activities if the value of each component of the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed twenty-five dollars. Provided, That initial applications for membership and any fees paid for such shall not include chances to enter raffles or to participate in any gambling activities;~~

~~Modified pricing schemes for tickets.~~

~~(6) The director may authorize an organization to deviate from the "same price" requirements of WAC 230-20-325(1) when the following requirements are met:~~

~~License required.~~

~~(a) The organization must have a current raffle license.~~

~~Request for approval.~~

~~(b) A request for approval of a modified pricing scheme must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested.~~

~~Subsequent pricing schemes.~~

~~(c) After an organization has received approval for a modified pricing scheme, the organization may utilize the identical approved pricing scheme in subsequent raffles, unless approval is rescinded or commission rules change. The following modified pricing schemes may be approved by the director:~~

~~Different prices for tickets—one cent to ten dollars.~~

~~(d) Chances to enter a raffle may be sold for different values, ranging from one cent to a maximum of ten dollars, if the following conditions are met:~~

~~(i) The scheme for assigning the cost of the ticket must be disclosed to the player before selling them a chance to participate. This disclosure shall include the total number of tickets in the population and the number of tickets at each price level;~~

~~(ii) Participants must be allowed to randomly select their ticket from the population of remaining tickets. Participants pay the amount imprinted upon the ticket they select;~~

~~(iii) The scheme provides an adequate audit trail that will allow commission staff and taxing authorities to determine gross gambling receipts;~~

~~(iv) The total gross gambling receipts available from raffles utilizing such schemes are limited to five thousand five dollars for each drawing;~~

~~(v) No more than two such drawings are conducted during a meeting of the members.~~

~~Discount based on number of tickets purchased.~~

~~(e) Chances may be sold for a discounted price that is based on the number of tickets a player purchases if:~~

~~(i) Participants are allowed to purchase a single ticket;~~

(ii) Only one discount scheme is allowed for each raffle. The amount of the discount must be set prior to beginning sales for the raffle;

(iii) The cost of a single ticket, without a discount, does not exceed ten dollars;

(iv) The total cost of a discount package does not exceed twenty-five dollars;

(v) The cost of a single ticket shall be imprinted on each ticket (i.e., one dollar a piece or twelve for ten dollars; or two dollars a piece or fifteen for twenty dollars); and

(vi) The licensee shall establish an audit system that includes controls and procedures that will allow commission agents and taxing authorities the ability to determine gross gambling receipts from the sale of tickets utilizing discounts. Such system shall be submitted to the director or the director's designee as a part of the approval request;

Other pricing schemes.

(f) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed twenty-five dollars; and

(g) Alternative pricing schemes may be used if specifically authorized by the director. Approval will be issued on an individual basis and will require a detailed written request;

Alternative drawing formats.

(7) The director may authorize an organization to determine the winners utilizing an alternative drawing format when the following requirements are met:

License required.

(a) The organization must have a current raffle license.

Request for approval.

(b) A request for approval of an alternative drawing format for a members-only raffle must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. Requests for approval of alternative drawing formats shall be signed by the organization's raffle manager.

Subsequent alternative drawing formats.

(c) After an organization has received approval for an alternative drawing format, the organization may utilize the identical alternative drawing format in subsequent raffles, unless approval is rescinded or commission rules change.

Incentives for selling tickets.

(8) The limitations on noncash incentive awards for an individual raffle, set forth in WAC 230-20-325(11), are modified to allow awards that do not exceed five percent of the combined gross gambling receipts for all raffles conducted during a membership meeting if a record of the name, address, and telephone number is maintained for all persons receiving awards valued in excess of fifty dollars;

Prizes.

(9) Prizes must be owned by the organization conducting the raffle prior to drawing the winning tickets. Raffle prizes must meet the following requirements:

(a) Firearms shall not be awarded as prizes: Provided, That a raffle licensee may award firearms as prizes under the provisions set forth in WAC 230-12-040;

(b) Unopened containers of liquor may be awarded as a prize when the proper permit is obtained from the liquor control board;

(c) Prize limits must meet the requirements set forth in WAC 230-20-015; and

(d) Prizes shall be controlled as set forth in WAC 230-20-300.

Records.

(10) Raffle records, as required by WAC 230-08-070, are modified as follows:

(a) The threshold value for maintaining a record of the name, address, and telephone number of each winner of a prize is increased to include only prizes valued in excess of fifty dollars;

(b) Ticket disbursement records are not required; and

(c) Minimum record retention period is reduced to a period that is not less than one year following the date of each individual raffle drawing.)) Only licensed charitable and non-profit organizations may conduct a members-only raffle. For purposes of this section, "members-only raffle" means a raffle where chances are sold only to members of the organization and a limited number of guests. Winners must be determined from among those members and guests that have purchased chances.

Licensed versus unlicensed.

(1) Organizations may conduct an unlimited number of unlicensed members-only raffles if the combined gross revenue from the raffles does not exceed five thousand dollars during a calendar year. If organizations plan to exceed the five thousand dollar gross revenue limit, they must obtain a raffle license.

Raffle to begin and end during membership meeting.

(2) All phases of the raffle must be completed during a meeting of the members or special event, and the meeting or event must be completed on the same day and at the same location without interruption.

Limit on number of guests.

(3) If organizations allow guests to participate, the total number of guests, as a percentage of the total attendance of the meeting, must not exceed twenty-five percent. The organization must maintain records to show compliance with this requirement.

Providing rules of play.

(4) Organizations must post a sign at each ticket sales point to provide participants with all rules of play or the required disclosures must be imprinted on the raffle ticket or chance.

Tickets in packages.

(5) Organizations may include chances to enter a raffle as a part of a package that includes dues, entertainment, or other fund-raising activities if the value of each component of

the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed twenty-five dollars. However, initial applications for membership and any fees paid for such must not include chances to enter raffles or to participate in any gambling activities.

Modified pricing plans for tickets.

(6) Organizations may use modified ticket pricing plans at members-only raffles as long as gross revenue does not exceed five thousand five dollars. Chances to enter a raffle may be sold for different values not to exceed ten dollars for a single chance if:

(a) The plan for assigning the cost of the ticket is disclosed to the players before selling them a chance to participate. The information must include the total number of tickets in the population and the number of tickets at each price level;

(b) Participants are allowed to randomly select their ticket from the population of remaining tickets and pay the amount imprinted on the ticket they select;

(c) There is an adequate audit trail to determine gross gambling receipts;

(d) No more than two such drawings are held during a meeting or event.

Discount based on number of tickets purchased.

(7) Chances may be sold for a discounted price that is based on the number of tickets a player purchases if:

(a) The amount of the discount is set before any raffle tickets are sold;

(b) Participants are allowed to purchase a single ticket;

(c) There is only one discount plan for each raffle;

(d) The cost of a single ticket, without a discount, does not exceed ten dollars;

(e) The total cost of a discount package does not exceed twenty-five dollars;

(f) The cost of a single ticket is imprinted on each ticket (for example, one dollar each);

(g) The discounted tickets are identified by a unique ticket audit numbering system; and

(h) An audit system is established that includes controls and procedures to determine gross gambling receipts from the sale of tickets utilizing a modified pricing plan.

Other pricing plan.

(8) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed twenty-five dollars.

Alternative drawing formats.

(9) Organizations may use alternative drawing formats set forth in WAC 230-20-325 for members-only raffles. Organizations may substitute prenumbered raffle tickets with similar objects that can be used to randomly determine winners if the organization:

(a) Has a current raffle license; and

(b) Establishes internal controls and accounting procedures that will:

(i) Provide permanent records with enough information to verify gross gambling receipts;

(ii) Prevent the manipulation of the random selection process; and

(iii) Document, in detail, the random selection process used.

Members-only alternative drawing formats.

(10) Organizations can only conduct alternative drawings for raffles that meet the criteria outlined in subsection (9) of this section. In addition to the alternative drawing formats listed in WAC 230-20-325, the following are also examples of alternative drawing formats that can be used for members-only raffles.

Mock raffle races (horse race raffles).

(a) Sequentially numbered and issued tickets/race forms are sold to participants to wager on a specific mock animal in a field of mock animal racers (typically five to ten racers). The mock animals will race in individual lanes divided into equal spaces or squares (for example, bingo boards are sometimes used as race lanes). Animals will move forward based on the numbers rolled on dice or balls drawn from a set of bingo balls. The first mock animal to cross the finish line will be declared the winner. All winning ticket holders will split the prize pool or a drawing of winning tickets will determine a single winner.

Video race raffles.

(b) Sequentially numbered and issued tickets/race forms are sold to participants to wager on the outcome of an unknown video taped race, typically horse races. The previously taped races must be obtained from an outside source and no participants must have knowledge of the specific race or the specific racers before conducting the video race drawing. Participants will be allowed to wager on the specific racers, identified by numbers, or a specific race lane. All participants holding a winning race number ticket or winning lane number ticket will be declared the winner. A drawing of the winning tickets may be held to determine a single winner.

Paddle wheel raffles.

(c) Numbered paddles or numbered tickets are sold to participants that correspond with numbered spaces on a spinning wheel. A balanced wheel divided into numbered segments is spun, at least one full revolution. The specific number the wheel stops on will determine the winning ticket holder.

Pick your own ticket.

(d) A predetermined number of objects or tickets are sold to participants. Each object or ticket may only be issued one time. If using a modified pricing plan, the selection of tickets must be based totally on chance and no participant can determine the price of a ticket before making their selection. All modified pricing plans must follow the requirements set out in subsections (6), (7) and (8) of this section.

Incentives for selling tickets.

(11) Organizations may provide members with noncash incentive awards for selling tickets if:

(a) The awards are based on the number of chances sold;

(b) The fair market value of the total amount awarded for an individual raffle does not exceed five percent of the gross gambling receipts of the raffle; and

(c) A record of the name, address, and telephone number is maintained for all persons receiving incentive awards.

Prizes.

(12) Organizations must own the prizes before drawing the winning tickets. Raffle prizes must:

(a) Not be firearms, unless awarded as prizes under the provisions set forth in WAC 230-12-040;

(b) Not be liquor, unless unopened containers of liquor are awarded as a prize in members-only raffles when the proper permit is obtained from the liquor control board (RCW 9.46.0315 and WAC 230-20-335);

(c) Meet the dollar amount limits set forth in WAC 230-20-015; and

(d) Be controlled as set forth in WAC 230-20-300.

Records.

(13) For members-only raffle records, WAC 230-08-070 is modified as follows:

(a) The name, address, and telephone number must be recorded for all winners of a prize valued at greater than fifty dollars, see WAC 230-08-070 (2)(e);

(b) A detailed record of disbursements and returned tickets is not required, see WAC 230-08-070 (2)(f); and

(c) All records must be maintained for a minimum of one year following the date of each individual raffle drawing, see WAC 230-08-070(4).

WSR 05-19-031

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 12, 2005, 4:30 p.m., effective October 13, 2005]

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

Purpose: To reinstate twelve-month continuous eligibility for children's medical. The governor has directed the Department of Social and Health Services to reinstate twelve-month continuous eligibility for the children's medical programs. When effective, this rule supersedes and replaces emergency rules filed as WSR 05-19-032.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530, and 74.09.415.

Adopted under notice filed as WSR 05-16-126 on August 3, 2005.

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: September 8, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-21-064, filed 10/18/04, effective 11/18/04)

WAC 388-416-0015 Certification periods for categorically needy (CN) medical and state children's health insurance program (SCHIP). (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families (~~and children~~) the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state or death. When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

~~((5))~~ (6) For an SSI-related person the certification period is twelve months.

~~((6))~~ (7) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

- (a) The child is receiving inpatient services on the last day of the month the child turns nineteen;
- (b) The inpatient stay continues into the following month or months; and
- (c) The child remains eligible except for exceeding age nineteen.

~~((7))~~ (8) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-529-0100.

~~((8))~~ (9) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((9))~~ (10) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((10))~~ (11) For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:

(a) The certification periods are described in subsections (1), ~~((4))~~ (5), and ~~((6))~~ (7) of this section;

(b) There is not a retroactive eligibility period as described in subsections ~~((7), (8), and (9))~~ (8), (9), and (10); and

(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:

(i) All other SCHIP eligibility factors are met; and

(ii) An eligibility decision is made per WAC 388-406-0035.

WSR 05-19-033
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 12, 2005, 4:37 p.m., effective October 13, 2005]

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

Purpose: The state is required under federal rules and regulations to implement a complaint resolution procedure as defined in 34 C.F.R. 76.770 and 76.783. The additions and deletions in chapter 392-168 WAC reflect these requirements to amend the complaint resolution.

Citation of Existing Rules Affected by this Order: Amended to reflect federal regulations.

Statutory Authority for Adoption: RCW 28A.300.070.

Adopted under notice filed as WSR 05-06-066 on March 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: Citations from federal law have been added; changes to process for filing a complaint directly to the Office of Superintendent of Public Instruction (OSPI) and then the steps that OSPI will take to resolve the complaint. No content changes beyond clarifications were made. Reviewed by Dave Stolier and approved September 9, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 8, Repealed 0; Federal Rules or Standards: New 0, Amended 8, 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: September 9, 2005.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 93-15, filed 9/13/93, effective 10/14/93)

WAC 392-168-110 Purpose. The purpose of this chapter is to ~~((ensure compliance by the state of Washington with 34 CFR 76.780 through 782, Department of Education regulations governing state-administered federal grant programs, 34 CFR 300.660 through 662, Individuals with Disabilities Education Act, and with the Hatch Amendment))~~ provide complaint procedures in compliance with 20 U.S.C. 7844 and 7883, and with 34 CFR 299.10-2099.12.

AMENDATORY SECTION (Amending Order 93-15, filed 9/13/93, effective 10/14/93)

WAC 392-168-115 Applicability. This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction ((and listed in 34 CFR 76.1(b)), including the following:

~~((1) Title III-A of the National Defense Education Act of 1958, Strengthening Instruction in Academic Subjects in Public Schools;~~

~~(2) Title IV of Public Law 96-511, Emergency Immigrant Education Program;~~

~~(3) Title II, Sections 201-206, 208-211, and 213 of the Education for Economic Security Act, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning;~~

~~(4) Part B of the Individuals with Disabilities Education Act, Assistance to States for Education of Students with Disabilities;~~

~~(5) Section 619 of the Individuals with Disabilities Education Act, Incentive Grants;~~

~~(6) Part A of Title I of the Vocational Education Act, State Vocational Education Program;~~

~~(7) Career Education Incentive Act (except Sections 10, 11, and 12) Career Education—State Allotment Program; and~~

~~(8) Adult Education Act (except Sections 309, 314, 317, and 318), State Adult Education Program;~~

~~(9) Provided, That pursuant to 34 CFR 76.1(c), this chapter shall not apply to programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981;~~

~~(a) Chapter 1—Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children, Grants to State Educa-~~

~~tional Agencies for Program to Meet the Special Educational Needs of Migratory Children, Grants to State Agencies for Programs to Meet the Special Education Needs of Children in Institutions for Neglected or Delinquent Children, State-operated Programs for Handicapped Children; and~~

~~(b) Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education:~~

~~(10) Provided further, That any additional complaint procedure requirements of particular programs shall be applicable to those programs in addition to the basic citizen complaint procedure described in this chapter.))~~

~~(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;~~

~~(2) Title I, Part B, Subpart 1: Reading First;~~

~~(3) Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program;~~

~~(4) Title I, Part C: Education of Migratory Children;~~

~~(5) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;~~

~~(6) Title I, Part F: Comprehensive School Reform;~~

~~(7) Title II, Part A: Teacher and Principal Training and Recruiting Fund;~~

~~(8) Title II, Part D: Enhancing Education Through Technology;~~

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

~~(9) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement;~~

~~(10) Title IV—21st Century Schools;~~

~~(11) Title IV, Part A, Subpart 1: Safe and Drug Free Schools and Communities;~~

~~(12) Title IV, Part B: 21st Century Community Learning Centers;~~

~~Title V—Promoting Informed Parental Choice and Innovative Programs~~

~~(13) Title V, Part A: Innovative Programs;~~

~~Title VI—Flexibility and Accountability~~

~~(14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;~~

~~(15) Title VI, Part B, Subpart 1: Small, Rural School Achievement Program;~~

~~(16) Title VI, Part B, Subpart 2: Rural and Low-Income Schools;~~

~~(17) Title IX—General Provisions;~~

~~(18) Title IX, Part E (Section 9532): Unsafe School Choice Option.~~

AMENDATORY SECTION (Amending Order 43, filed 11/20/90, effective 12/21/90)

WAC 392-168-125 Definition—Complaint. As used in this chapter, the term "complaint" means an allegation, by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has violated a federal statute or regulation or a related state regulation that applies to a federal program covered under this chapter.

AMENDATORY SECTION (Amending Order 93-15, filed 9/13/93, effective 10/14/93)

WAC 392-168-132 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, ~~((and))~~ professional organizations, and other appropriate entities;

(2) Conducting inservice training sessions on the complaint process through educational service districts; and

(3) Including information about the system in statewide conferences.

AMENDATORY SECTION (Amending Order 90-09, filed 5/9/90, effective 6/9/90)

WAC 392-168-135 Right to register a complaint. Any individual ~~((entity))~~ or organization may ~~((register))~~ file a signed, written complaint ~~((: Provided, That a complaint filed pursuant to the Hatch Amendment may be filed only by a student or parent or guardian of a student directly affected by the alleged violation: Provided further, That if a parent or adult student has also filed a request for a due process special education hearing pursuant to WAC 392-171-531, regarding the same issues, a citizen complaint by such person regarding noncompliance shall be held in abeyance until the hearing has been concluded))~~.

AMENDATORY SECTION (Amending Order 90-09, filed 5/9/90, effective 6/9/90)

WAC 392-168-140 Contents of complaint. A written complaint filed under this chapter shall include:

(1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program covered under this chapter;

(2) The specific requirement alleged to have been violated;

(3) The facts on which the ~~((statement))~~ complaint is based;

~~((3))~~ (4) The name and address of the complainant; ~~((and~~

~~((4))~~ (5) The expected resolution of the alleged violation; and

(6) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the superintendent of public instruction, the name and address of the allegedly offending entity.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

WAC 392-168-145 Procedure for filing a complaint. The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with ~~((a responsible official of the local school district, an educational service district, or other subgrantee: Provided, That a complaint alleging a violation by an entity other than the state may be filed directly with))~~ the superintendent of public instruction ~~((at the complainant's discretion))~~.

(2) ~~((A complaint against a local school district, an educational service district, or other subgrantee filed directly with the superintendent of public instruction shall be referred back to the allegedly offending entity for action pursuant to this chapter.))~~ The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee. Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the ~~((employee(s) designated pursuant to WAC 392-168-150 shall investigate))~~ superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) ~~((Upon completion of the investigation, the designated employee(s) shall provide the responsible official of the entity with a written report of the results of the investigation. Said officials shall respond in writing to the complainant))~~ The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the ~~((complainant))~~ superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) ~~((The))~~ Propose reasonable corrective action(s) deemed necessary to correct the violation ~~((: Provided, That any such corrective measures shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant))~~.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by No Child Left Behind Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. OSPI may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

(10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ~~((sixty))~~ ten calendar days after the date of receipt of ~~((such complaint by the superinten-~~

~~dent of public instruction)) the written report described in subsection (3) of this section.~~

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-168-120	Definition—Hatch amendment.
WAC 392-168-160	Appeal to the superintendent of public instruction of a local school district, educational service district, or other subgrantee decision.
WAC 392-168-165	Content of appeal notice.
WAC 392-168-167	General responsibilities of superintendent of public instruction.
WAC 392-168-170	Actions by superintendent of public instruction in response to notices of appeal and notices registering complaints.

WSR 05-19-042

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed September 14, 2005, 2:31 p.m., effective October 15, 2005]

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

Purpose: Updating the rules will clarify the program and the parameters for participation by private employers, public agencies, nonprofit organizations, developers, and property managers.

Citation of Existing Rules Affected by this Order: Amending chapter 468-60 WAC.

Statutory Authority for Adoption: RCW 70.94.996.

Adopted under notice filed as WSR 05-16-121 on August 3, 2005.

Changes Other than Editing from Proposed to Adopted Version: The definition of an annualized commute vehicle trip was added to subsection (2).

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

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

Date Adopted: September 13, 2005.

J. Giniger, Director
Public Transportation
and Rail Division

Chapter 468-60 WAC

~~((CTR))~~ **TRIP REDUCTION PERFORMANCE**
~~((GRANT))~~ **PROGRAM**

AMENDATORY SECTION (Amending WSR 04-06-087, filed 3/3/04, effective 4/3/04)

WAC 468-60-010 ~~((Commute))~~ **Trip reduction performance** ~~((grants))~~ **program**. The Washington state department of transportation (WSDOT) ~~((will develop))~~, together with the commute trip reduction (CTR) task force ~~((CTR))~~, ~~((and))~~ will administer ~~((a CTR performance grant program designed to reduce the number of commute vehicle miles traveled (VMT) and commute vehicle trips by employees))~~ the trip reduction performance program (TRPP). This program is designed to create cost-effective trip reduction projects that reduce the number of commute vehicle trips and commute vehicle miles traveled (VMT). The 2003 legislature created this ~~((grant))~~ program to provide financial incentives or compensation to organizations that implement and administer cost-effective projects that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. The amounts ~~((granted))~~ awarded will be based on the estimated cost to reduce an annualized trip, and the projected number of annual commute vehicle trips and commute VMT reduced during the ~~((grant))~~ project period (the project goal). Up to half of the award amount is available through reimbursement for start-up costs. The remaining award amount ~~((of funds provided to the grantee))~~, as well as any bonus funds, will be determined based on the actual performance of their project in meeting or exceeding their goal. If necessary, WSDOT will revise these rules ~~((following the first grant round))~~ periodically to create a more ~~((effective and))~~ efficient ~~((grant))~~, cost-effective, trip reduction program.

(1) **What are** ~~((CTR performance grants))~~ **trip reduction performance projects?** ~~((Grants))~~ Funds are awarded on a competitive basis to organizations ~~((for reducing))~~ that create cost-effective projects designed to reduce commute vehicle trips and commute ~~((vehicle miles traveled))~~ VMT (based on the morning commute). The ~~((grantee))~~ organization will receive funds based on the value ~~((to the transportation system of the))~~ associated with each trip and overall

project performance. The ~~((performance grant program))~~ TRPP is available to private employers, public agencies, non-profit organizations, developers, and property managers who find new (to the area), sustainable ways to reduce the number of vehicle trips and vehicle miles traveled per person for commuting, or who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules ~~((, and that reduce the number of vehicle trips and miles traveled for commuting))~~.

(2) **Definitions.** For purposes of this section, the following definitions apply.

(a) *Financial incentives* is defined as a policy, procedure, capital investment or payment intended to provide employees a financial gain if they commute in ways other than by driving alone. For example, the eligible incentives may include, but are not limited to: Providing a free transit pass, reducing the parking charge for rideshare vehicles, initiating parking charges for employee vehicles, reducing the cost of a transportation service such as a transit pass, paying the membership fee for a car sharing program, providing employees alternative work week schedules, providing a direct cash payment, reducing the insurance rate for employees who reduce the use of their vehicle for commuting, or reducing the distance an employee travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(d) *Commute vehicle trips* is defined as the number of vehicle trips made to bring employees to work at a worksite or specified collection of worksites each morning.

(e) *Reduced commute vehicle trips* is defined as the change in the number of vehicle trips made to bring a consistent number of employees to a worksite or collection of worksites. Reduced vehicle trips can be calculated using ~~((two separate))~~ a baseline survey((s)) that measures the number of vehicles arriving at the specified worksite(s) ((and making)) and the mode split, and a subsequent survey that includes the same audience, the mode split, and an adjustment made for the change in the number of employee responses ((for)) between the two surveys. The difference between the two surveys will show an increase or reduction in commute vehicle trips. Subsection ~~((16))~~ (15) of this section describes in detail the process used by WSDOT to calculate reduced commute vehicle trips.

(f) *Commute vehicle miles traveled per person (VMT)* is the average distance employees travel to work (one way) in a motor vehicle, divided by the vehicle occupancy. For passenger cars, trucks, vans, and motorcycles, WSDOT will calculate the vehicle occupancy from survey data using CTR task force guidelines, or from equivalent data as agreed by WSDOT and the applicant. For buses, WSDOT will assume an average occupancy of twenty-five persons. Bicycling,

walking, train ridership, and the avoidance of commute vehicle trips via telework and use of compressed workweeks, will not be considered as using motor vehicles.

(g) *Reduced VMT* is defined as the measured change in the number of vehicle miles traveled per employee. Reduced VMT can be calculated from two separate surveys that measure the commute distance per employee and the way they commute to work.

(h) *Performance* is defined as the reduction in the number of commute vehicle trips to the work location and the reduction in the commute vehicle miles traveled by employees at the specified work location(s).

(i) *Eligible trips* are defined in this section as the commute trips taken by employees at the targeted worksite(s) established in the applications and measured ~~((in))~~ using the proposed measurement methodology. ((To be considered an eligible reduced trip and VMT, the involved employee must benefit from the program implemented by the applicant.))

(j) *Agent* is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the ~~((grant program))~~ TRPP or providing the employee the financial ~~((service))~~ incentive.

(k) A *cost effective application* is one that defines a project that will reduce commute vehicle trips and commute vehicle miles traveled at a cost less than the defined roadway capacity cost. This cost will vary by year and will be clearly identified on the ~~((grant))~~ TRPP application form.

(l) *Mode split* is the percentage of employees traveling to work using various means of transportation (known as modes). For example, if the drive alone mode split for a worksite is seventy-three percent, then seventy-three percent of the employees arriving at that site drove alone.

(m) *Commute mode* is the means of transportation an employee took to work. For example, their commute mode may be by driving alone, carpooling, alternative work schedule, teleworking, etc.

(n) An annualized commute vehicle trip is the average number of vehicle trips made each working day by a commuting population. If, for example, one hundred employees drive alone to a job that lasts six months, the result would be fifty "annualized" commute vehicle trips. WSDOT assumes two hundred fifty workdays per year for calculating an annualized trip.

(3) **Who can apply?** ~~((These))~~ The statewide ((grants)) funds are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who ((provide)) create new, sustainable trip reduction projects, and who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and compressed work weeks.

(4) **What kinds of projects will be funded?** To receive funds, the project must meet the ~~((review criteria))~~ program requirements and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible ~~((to receive a grant))~~ for selection. The primary focus of the review committee will be to select sustainable, cost-effective trip reduc-

tion projects, and if they are new or innovative, they will be given additional consideration.

(5) How much money is available for the program?

The amount of funds made available for this program is set in the state transportation budget. For the ~~((2003-))~~2005-2007 biennium, one million five hundred thousand dollars is budgeted for the ~~((grants))~~ projects. ~~((No more than seven hundred fifty thousand dollars will be available for each fiscal year (July-June).))~~

(6) How will the ~~((grant))~~ TRPP funds be distributed?

A minimum amount of the ~~((grant))~~ TRPP funds is ~~((guaranteed))~~ to be available ~~((in))~~ for each of three funding zones: Ten percent of available funds for Central Puget Sound (CPS) (King, Pierce, Snohomish counties), ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining ~~((grant))~~ funds will be awarded based on the project's ranking and available funds. WSDOT is bound to this distribution only if there are applications that fit the program structure and are viable, cost-effective trip reduction projects.

(7) How much money will be awarded to individual ~~((grants))~~ projects? Funds will be allocated based on the estimated commute vehicle trips and miles traveled reduced for the project. The applicant will provide an estimate of the anticipated performance (their goal), and the amount of funds they request. Once the selection committee ranks the projects, WSDOT will award ~~((the grants))~~ funds based on committee ranking until seven hundred fifty thousand dollars is awarded in each fiscal year or all cost effective projects are funded. No one employer, etc., may receive more than one hundred thousand dollars per fiscal year.

(8) How much money can be awarded to applications with multiple ~~((employer))~~ partners? Each organization (agency or employer) on the application may receive up to one hundred thousand dollars with the total amount ~~((of funds that can be provided to a partnership application is the sum of the total amount eligible per employer up to two hundred fifty thousand dollars per application. No single application or project will be awarded a grant in excess of two hundred fifty thousand dollars))~~ not to exceed two hundred fifty thousand dollars per application, per fiscal year.

(9) How does the applicant apply for the ~~((grant))~~ TRPP funds? This subsection describes the application procedures used in the ~~((performance grant program))~~ TRPP. WSDOT will notify eligible applicants of the open period for ~~((grant))~~ applications. WSDOT may open more than one ~~((grant))~~ application period per year depending on whether all funds are awarded. Applicants apply ~~((for this grant))~~ by submitting a completed ~~(("Performance Grant Application"))~~ "TRPP" application form during an open ~~((grant))~~ application period. The ~~(("Performance Grant Application"))~~ "TRPP" application form is available on request from ~~((the Washington state department of transportation))~~ WSDOT and is also available ~~((to be downloaded from the WSDOT web site at: <http://wsdot.wa.gov/TDM/performancegrant/>))~~ by visiting WSDOT's web site at: <http://wsdot.wa.gov/TDM>.

(a) ~~((No private employer, public agency, nonprofit organization, developer, or property manager is eligible for~~

~~grants under this section in excess of one hundred thousand dollars in any fiscal year.~~

~~((b-Eligible))~~ Applicants may submit more than one ~~((application-))~~ project application for consideration; however, ~~((no applicant may request more grant funds than they are))~~ when the sum of all the project costs are combined, they cannot exceed what the individual applicant is eligible to receive.

~~((e))~~ ~~((b))~~ Applicants may ~~((, and are encouraged to,))~~ submit ~~((a grant))~~ an application that will cover one or two years (basic project) or apply for projects that cover three to five years (multi-year projects).

~~((c))~~ For basic projects, applications ~~((covering two years))~~ must estimate the number of vehicle trips and VMT reduced for each ~~((of the two))~~ fiscal year~~((s))~~, and must specify their target audience. Only one ~~((base))~~ baseline measurement will be required for a ~~((two-year application))~~ basic project. A final measurement will be required to determine the project's performance. A two-year basic project can receive the start-up portion of their award in the first year, and the performance portion in the second year. If a basic project is granted a renewal, the applicant may be required to conduct another baseline measurement. Renewal applications may include a proposed adjustment to the trip price and/or goal. Adjustments to the trip price or goal are subject to approval by WSDOT. All basic projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips. ~~((Recipients of two-year grants may receive the start-up portion of their award in the first year and the performance portion in the second year. In this situation, funding for the trips and VMT reduced will be assumed to have occurred in the second year of the project.))~~

~~((d))~~ ~~((The grant funds must be received by the grantee by the end of the fiscal year in which the application was received.~~

~~((e-))~~ ~~((No grants))~~ In the case of multi-year projects (three to five years), applicants must estimate the number of vehicle trips and VMT reduced for each biennium, as well as a project total, and must specify their target audience. Only one baseline measurement will be required for multi-year projects, unless otherwise stated in the scope of work. An interim measurement must be conducted prior to the end of each biennium, and a final measurement at the end of the project. Interim and final performance funds, as well as bonus funds will be based on these measurements. Recipients will be able to receive start-up funds that are phased throughout the life of the project (see subsection (12) of this section for details on start-up fund disbursement). Performance funds will be available at the end of each biennium (interim performance funds) and again at the end of the project. The interim and final performance measurements and requests for funds must be received by WSDOT by June 15th. Projects may apply for an adjustment to the trip price and/or their goal at the end of each biennium. Trip price and goal adjustments will be subject to review and approval by WSDOT. All multi-year projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute

trips. Payments for multi-year projects are contingent upon the provision of legislative funding in future biennia.

(e) No TRPP funds will be awarded to an applicant requesting compensation at a rate higher than the estimated annualized cost of providing new roadway capacity (maximum per trip cost) adopted for this program. The ((annualized cost of providing new capacity)) maximum per trip cost will be provided by WSDOT as part of the application document.

(f) For purposes of distributing awarded funds, one trip is assumed to equal 13.07 VMT (the average commute distance measured as part of the CTR program) or the average one-way commute distance for the employees covered by the project. The applicant may, through documentation in the applications, provide a different trip to VMT ratio that is specific to employees in their proposal.

(g) An agent "who will provide the financial incentive to the employee" can submit a project partnership ((grant)) application and be the prime ((grantee)) recipient for the project. All procedures in this section will apply to the agent for this type of partnership ((grant)) project.

(h) No applicant may claim ((a)) full reduction in employee commute vehicle trips or commute VMT that ((is)) are claimed as part of another ((application)) project. If the initial screening determines that project overlap will occur, WSDOT will notify the applicants, and will provide them with the opportunity to adjust their trip prices and goals. The payout for areas where WSDOT can determine the overlap will be adjusted by dividing the amount per trip by the number of TRPP projects involved in the overlap.

(10) How will the application be reviewed? An award committee comprised of between six and nine members will be selected by the chair of the CTR task force and will include at least two members of the commute trip reduction task force, at least one member from Central Puget Sound and one from the rest of the state, at least one employer, at least one transit member and at least one city government representative. ((Grants)) Projects will be ((awarded)) selected based on the criteria as defined in subsection (11) of this section.

(11) What are the review criteria? The applications will be reviewed based on the following criteria((-)):

(a) ((Applicant provides incentives: To be eligible for the grant, the applicant must provide financial incentives to their own or other employees for ridesharing, using public transportation, car sharing, or nonmotorized commuting.

(b) Project predictability: Are the estimates of employee participation and overall trip and VMT reduction likely to be achieved based on the assessment of the review committee?

(c) Measurability: The performance of the project must be measurable. If the applicant submits their own measurement approach, the measurement plan submitted must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool (subsection (16) of this section).

(d) Cost effectiveness: Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of performance grant funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(e) Sustainability: If this project is funded, will its benefits continue after the grant-funded element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all grant funds are used?

(f) Thoroughness: Has the project been thoroughly researched and carefully thought out? Are adequate details presented?)) Cost effectiveness: Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of TRPP funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(b) Sustainability: If this project is funded, will its benefits continue after the funding element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all TRPP funds are used? Can the reduction in trips be sustained over a "multi-year project" timeline?

(c) Innovation: Is the proposed project a new idea, or something that's been done before but is new to the area? Does the project propose unique cost-effective ways to reduce trips?

(d) Measurability: The performance of the project must be measurable. If an applicant proposes to use their own measurement approach, a detailed measurement plan will be submitted as a part of the application and must be approved by WSDOT. The measurement approach must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool (subsection (15) of this section). Deviations from the approved measurement plan will be subject to review and approval by WSDOT. WSDOT may terminate the contract if the measurement deviation is not approved.

(e) Project implementation: What is the timeline for implementation of the project? When and how will the project be advertised to the target audience? All projects must conduct a baseline survey at the beginning of the project prior to implementation of the project. The applicant must indicate the implementation timeline, proposed measurement methods and measurement schedule in the application. If the nature of the project does not allow for a single baseline survey, the applicant must indicate the proposed measurement methodology as a part of the application. All projects must be implemented within three months (first quarter) after signing the contract in order to receive one hundred percent of the awarded funds. If the project is not implemented until the second quarter, only seventy-five percent of the awarded funds will be available; fifty percent if implementation does not occur until the third quarter; and twenty-five percent if implementation does not occur until the fourth quarter.

(f) Applicant provides incentives: To be eligible for TRPP funds, the applicant must provide financial incentives to their own or other employees for ridesharing, using public transportation, car sharing, or nonmotorized commuting.

(g) Project predictability: Are the estimates of employee participation, trip reduction, and VMT reduction likely to be achieved based on the assessment of the review committee?

~~((g))~~ **(h) Redundancy:** Does the project propose to provide services that are already available ~~((for))~~ to the employees?

(i) Thoroughness: Has the project been thoroughly researched and carefully thought out? Are adequate details presented in the application?

(12) How will the recipient receive the money? Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the ~~((grantee))~~ award recipient can receive for the project, the timelines and performance expectations. The funds will be provided to the ~~((grantee))~~ recipient through three approaches: Start-up, performance and performance bonus. A draft contract will be made available by WSDOT prior to project selection.

(a) Start-up funds: The ~~((grantee))~~ basic project award recipient may request up to fifty percent of the awarded ~~((funds))~~ amount after ~~((project start-up))~~ a baseline measurement is completed or accepted. Start-up funds can be requested in the first year of the project. Multi-year project award recipients are eligible for start-up funds through a phased payment approach. To calculate the start-up fund disbursement for multi-year projects, multiply the total project amount by 0.5, then divide that number by the number of years in the project. Start-up funding will be provided on a dollar for dollar ~~((on a))~~, cost-reimbursable basis, but ~~((in no circumstances))~~ will ~~((this amount))~~ not exceed fifty percent of the total project award for the duration of the project. The remaining award amount is considered performance funds.

(b) ~~((Grant))~~ Performance funds: The remaining funds will be available to the ~~((grantee))~~ recipient following the performance measurement. For basic projects, the ~~((grantee))~~ recipient has the option to measure their performance at the halfway ~~((through the project and at the end of the year))~~ point (interim measurement), but is required to measure at the end of their project. If the ~~((grantee))~~ recipient conducts ~~((a midterm))~~ an interim measurement, they will be eligible to receive half of the performance funding following this measurement with the balance available after the ~~((see-end))~~ final measurement survey. If the ~~((grantee))~~ recipient elects to ~~((measure only at the end of the project))~~ forego an interim measurement, all of the remaining funds will be available after the final measurement, ~~((depending on))~~ and will be determined by the performance ~~((they achieved through))~~ of their project. ~~((No performance funds will be available for any project that fails to perform.))~~ For multi-year projects, the recipient must measure their performance at the end of each biennium (by June 15th), and at the end of the project. All projects must reduce trips to be eligible for performance funds.

(c) Performance bonus funds: These funds will only be provided at the end of the contract period and the recipient will receive the funds for additional performance based on the same award rate per trip reduced and same award rate per VMT reduced as identified in their contract. The ~~((grantee))~~ recipient will be eligible to receive additional bonus funds up to one hundred twenty percent ~~((additional funds if the performance of their project))~~ or up to the maximum per trip cost

(whichever is less) for every trip that exceeds their anticipated performance (the projected number of trips reduced). ~~((These funds will only be provided at the end of the contract period and the grantee will receive the funds for additional performance based on the same award rate per trip reduced and same award rate per VMT reduced as identified in their application and subsequent contract. Note: No one employer, etc., may receive more than one hundred thousand dollars in a FY.))~~ The performance bonus portion of the funding will only be available if funds are remaining in the ~~((grant))~~ TRPP account.

~~((13))~~ ~~((Project timeline: To receive all eligible grant funds for the fiscal year, the grantee must provide measured data on their project's performance to WSDOT by June 15th.~~

~~((14))~~ **Receipt of ~~((grant))~~ TRPP funds:** To receive all eligible TRPP funds for the fiscal year, the recipient must provide measured data on their project's performance (baseline, interim and final surveys) to WSDOT by June 15th. The ~~((grantee))~~ recipient must submit a ~~((grant))~~ TRPP fund disbursement form provided by WSDOT in order to ~~((receive their grant))~~ request funds. On this form the ~~((grantee))~~ recipient will identify the funds requested and provide documentation of performance or expenditures ~~((if required))~~ for reimbursement of start-up costs. For the performance portion of the ~~((grant))~~ TRPP award, no funds will be made available without documentation of actual employee reductions in VMT and vehicle trips. Applications for multi-year projects must demonstrate the organization's ability to accept payments for performance, as well as bonus funds, through the end of the project time frame.

~~((15))~~ **(14) Performance documentation:** The applicant must, as part of the application, ~~((indicate how they will provide evidence of the performance made during the year))~~ describe the measurement approach for their project. WSDOT will make available a survey instrument that can be used to measure performance at employer worksites. The ~~((grantee))~~ recipient may elect to provide performance data in an alternative format ~~((approved))~~. The alternative format will be subject to approval by WSDOT. The measurement approach used by the applicant must clearly demonstrate how ~~((changes))~~ reduced trips and VMT are calculated and how adjustments will be made for changes in employee population.

~~((16))~~ **(15) Measurement of VMT and commute trips reduced:** Measurement of performance must provide actual counts of vehicle trips and VMT made by the employees in the program, preceding and following the ~~((grant))~~ project period. The performance measurement must adjust for changes in employee populations during the ~~((grant))~~ project period. WSDOT will use the following methodology to calculate changes in the number of commute trips and commute VMT at a project worksite(s):

(a) Baseline survey. At the beginning of the ~~((program))~~ project, the worksite(s) will survey their employees about their commuting behavior using the standard WSDOT commute trip reduction employee survey form. This initial survey is called the baseline survey. WSDOT will calculate a baseline mode split, based on results from the baseline survey. In calculating this mode split, and those from subsequent surveys, WSDOT will calculate assumptions to adjust for miss-

ing data, days reported by employees as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of compressed workweeks as specified in the CTR guidelines published by WSDOT and available on the internet at <http://www.wsdot.wa.gov/tdm/tripreduction/CTRguide/SEC3.cfm>. Any start-up costs are contingent upon completion or acceptance of the baseline survey.

(b) **Performance measurement survey.** For basic projects (one- to two-year), the ((grantee)) recipient will have the option to survey the eligible project employees ((a second time by June 15th. This second survey is called the performance measurement survey)) midway through the project (by June 15th if it is a two-year project), and is required to survey at the end of the project. For multi-year projects (three to five years), the recipient will be required to survey the eligible project employees at the beginning of the project, each biennium (by June 15th), and at the end of the project.

(c) WSDOT will calculate the mode split based on the results of the performance measurement ((survey)). Using the number of employees at the site ((during the first measurement survey)) and the mode split from the ((first measurement)) baseline survey, WSDOT will calculate the average number of vehicle trips that employees took per day((during the first measurement survey period)). Using this same number of employees, WSDOT ((also)) will calculate the average number of trips the employees ((would have taken)) took per day during the ((first)) performance measurement survey ((if they had)) (interim or final) and compare it to the mode split calculated from the baseline survey.

(d) The difference between the two numbers calculated under subsection (2)(b) of this section is the change in the average number of trips per day at the site between the two surveys. These calculations take into consideration changes in employment at the site; the employer will not be entitled to increased payments due to a reduction in force or be penalized because of an increase in employment.

(e) WSDOT will calculate the average one-way distance for morning commute trips made by each mode in the performance measurement survey, and multiply this by the change in the average number of trips by that mode per day. The sum of these values for motorized commuting modes is the change in VMT.

WSR 05-19-045

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 15, 2005, 10:12 a.m., effective October 16, 2005]

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

Purpose: Adopting new WAC 388-106-0720 through 388-106-0740, Medicare/Medicaid integration program (MMIP) services; and amending WAC 388-106-0015 What long-term care services does the department provide?, to implement a new and innovative managed care program in the state of Washington that will combine long-term care and medical services under one coordinated service delivery

model and capitated payment structure, thereby improving client outcomes through increased coordination, while better managing Medicaid expenditures. When effective, this rule supersedes emergency rules filed as WSR 05-14-074.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.

Adopted under notice filed as WSR 05-16-084 on August 1, 2005.

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 5, 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 5, Amended 1, Repealed 0.

Date Adopted: September 13, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medical personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-825 through 388-853 WAC.

(16) **Nursing facility.**

(17) **Medicare/Medicaid Integration Project (MMIP)** is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.

MEDICARE/MEDICAID INTEGRATION PROGRAM (MMIP) SERVICES

NEW SECTION

WAC 388-106-0720 What services may I receive under MMIP? (1) Once you are determined eligible, your care plan could include, but is not limited to, any of the following long-term care services:

- (a) Care coordination;
- (b) Personal care services in your own home or in a residential facility;
- (c) Home Health Aide;

- (d) Adult Day Services;
- (e) Environmental Modifications;
- (f) Personal Emergency Response System (PERS);
- (g) Skilled Nursing;
- (h) Specialized Medical Equipment and Supplies;
- (i) Home Delivered Meals;
- (j) Residential care;
- (k) Nursing facility care.

(2) The care plan may also include, but is not limited to, the following medical services:

- (a) Primary medical care;
- (b) Restorative therapies, including speech, occupational, and physical therapy;
- (c) Nursing Services;
- (d) Durable medical equipment (e.g., wheelchair);
- (e) Pharmaceutical products;
- (f) Immunizations and vaccinations;
- (g) Vision Care;
- (h) Emergency room visits and inpatient hospital stays.

The care plan may also include other services determined necessary by the interdisciplinary team to improve and maintain your overall health status.

NEW SECTION

WAC 388-106-0725 Am I eligible for MMIP services? To qualify for Medicaid-funded MMIP services, you must:

- (1) Be age sixty-five or older;
- (2) Live within the designated MMIP service area;
- (3) Be eligible for Medicare (Parts A and B);
- (4) Be eligible for Medicaid-funded medical and/or long-term care services.

(a) To be eligible to receive long-term care services under this program, you must meet functional eligibility for one of the long-term care programs per WAC 388-106-0210(2), WAC 388-106-0310(4), or WAC 388-106-0355(1) and financial eligibility for noninstitutional categorically needy, or institutional categorically needy as described in chapter 388-513 WAC and WAC 388-515-1505.

(b) Ongoing functional and financial eligibility for long-term care services will be determined at least annually by the state.

(c) If you are determined not eligible for long-term care services, you may be eligible to receive medical services under MMIP; and

(5) Not be enrolled in any other medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan).

NEW SECTION

WAC 388-106-0730 How do I pay for MMIP services? Depending on your income and resources, you may be required to pay for part of your MMIP services. The department's financial worker will determine what amount, if any, you must contribute toward the cost of your care.

NEW SECTION**WAC 388-106-0735 How do I disenroll from MMIP?**

You may choose to disenroll from MMIP for any reason at any time. See WAC 388-538-061 for additional information on ending enrollment in MMIP.

NEW SECTION

WAC 388-106-0740 What is the fair hearing process for enrollee appeals of managed care organization actions? See WAC 388-538-112 for additional information about the fair hearing process.

WSR 05-19-048**PERMANENT RULES****DEPARTMENT OF HEALTH**

(Examining Board of Psychology)

[Filed September 15, 2005, 11:19 a.m., effective October 16, 2005]

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

Purpose: These rules create minimum standards for retention periods of client records and require psychologists to establish an office policy identifying how client records will be maintained in the event that the psychologist is no longer practicing.

Citation of Existing Rules Affected by this Order: Amending WAC 246-924-354 Maintenance and retention of records.

Statutory Authority for Adoption: RCW 18.83.050, 18.130.050.

Adopted under notice filed as WSR 05-13-187 on June 22, 2005.

A final cost-benefit analysis is available by contacting Janice K. Boden, Program Manager, Department of Health, 301 Israel Road, Tumwater, WA 98501, phone (360) 236-4912, fax (360) 236-4909, e-mail janice.boden@doh.wa.gov.

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

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

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

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

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

Date Adopted: July 29, 2005.

Doug Uhl, Ph.D., Chair
Examining Board of Psychology

AMENDATORY SECTION (Amending Order 337B, filed 3/10/93, effective 4/10/93)

WAC 246-924-354 Maintenance and retention of records. (1) ~~((The))~~ A psychologist ~~((rendering))~~ who renders professional services to a client or clients, ~~((rendering))~~ renders services billed to a third party payor, shall document services except as provided in (g) of this subsection. ~~((That))~~ The documentation ~~((shall))~~ must include:

- (a) The presenting problem(s), purpose, or diagnosis;
- (b) The fee arrangement;
- (c) The date and service provided;
- (d) A copy of all tests and evaluative reports prepared;
- (e) Notation and results of formal consults including information obtained from other persons or agencies through a release of information;
- (f) Progress notes reflecting on-going treatment and current status; and
- (g) If a client requests that no treatment records be kept and the psychologist agrees to the request, the client's request must be in writing and ~~((only))~~ retained with the following ~~((must be retained))~~ information:

- (i) Identity of the recipient of the services;
- (ii) Service dates and fees;
- (iii) Description of services;
- (iv) ~~((Written request that no records be kept. (2)))~~ The psychologist shall not agree to the request if maintaining records is required by other state or federal law.

(2) All records must be retained for at least eight years following the last professional contact with the client(s). In the case of minors under the age of eighteen, the records must be retained until the client reaches the age of twenty-two or for eight years, whichever is longer.

All records must be securely maintained with appropriate limited access in accordance with any other applicable state or federal laws.

(3) The psychologist rendering services must have a written policy to ensure the maintenance and confidentiality of the client records in the event of retirement, discontinuation of practice or employment, discontinuation of practice in the state of Washington, or inability to maintain practice or employment (e.g., illness or death of the psychologist).

This written policy must be made available to the board upon written request, within sixty days. The written policy shall:

(a) Designate a qualified person(s) or, if appropriate, hospital, clinic or other health care facility, to make necessary clinically relevant referrals if the psychologist is unable to do so;

(b) Detail a plan for fulfilling record requests described under this subsection; and

(c) Require the subsequent record holder to maintain records in accordance with any other applicable state or federal laws or rules.

(4) In the case of psychological or neuropsychological evaluations, tests or assessments, the psychologist may exercise clinical judgment in determining whether or not to retain specific records beyond the minimum retention period specified in subsection (2) of this section.

(5) After the minimum records retention period is met for a client record, the psychologist may elect to dispose of

the record. If the record is disposed of, it shall be done in a secure and confidential manner. Proper disposal means paper is shredded; electronic media is deleted, erased, or reformatted; and other readable forms of media is defaced or rendered unusable or unreadable.

WSR 05-19-059
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed September 16, 2005, 11:54 a.m., effective October 17, 2005]

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

Purpose: To amend WAC 388-473-0010 General provisions for ongoing additional requirements and 388-473-0020 Restaurant meals as an ongoing additional requirement; and to repeal WAC 388-473-0030 Home-delivered meals as an ongoing additional requirement. The needed changes will extend the eligibility period for ongoing additional requirements for SSI recipients from yearly to up to twenty-four months and clarify what are ongoing additional requirements and their eligibility criteria.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-473-0030; and amending WAC 388-473-0010 and 388-473-0020.

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

Adopted under notice filed as WSR 05-15-078 on July 14, 2005.

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

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

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

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

Date Adopted: September 12, 2005.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-01-070, filed 12/12/00, effective 2/1/01)

WAC 388-473-0010 ((General provisions for)) What are ongoing additional requirements((-)) and how do I qualify? ((For the purposes of this chapter, "we" and "us" refers to the department of social and health services. "You" refers to the applicant or recipient. An)) "Ongoing additional

requirement" ((is a continuing need that you have for which you require additional financial benefits in order to)) means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

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

(a) ((Eligible for temporary assistance for needy families (TANF), Tribal TANF, state family assistance (SFA), refugee or general assistance cash, or SSI payments; and

(b) Aged: You are age sixty-five or older;

(c) Blind: You have central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or limited fields of vision so the widest diameter of the visual field subtends an angle of no greater than twenty degrees; or

(d) Disabled: You are unable to engage in any substantial gainful activity due to a medically determinable physical or mental impairment that:

(i) Can be expected to result in death; or

(ii) Has lasted or can be expected to last for a continuous period of not less than twelve months.-))

Temporary Assistance for Needy Families (TANF) , or Tribal TANF;

(b) State Family Assistance (SFA);

(c) Refugee Cash;

(d) General Assistance Cash; or

(e) Supplemental Security Income (SSI).

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

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. ((If deciding if you are eligible for ongoing additional requirement benefits, we consider and verify)) We make the decision based on proof you provide of:

(a) The circumstances that create((d)) the need; and

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

(4) ((When)) We ((determine)) authorize ongoing additional requirement benefits ((are needed, we:

(a) Increase)) by increasing your monthly cash assistance benefit ((to provide the additional benefits by monthly payment;)).

((b) Periodically)) (5) We use the following review cycle table to decide when to review ((whether you continue to)) your need for the additional ((benefits)) benefit(s). ((We conduct this review at least:))

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

((i) Twice a year for TANF and refugee cash assistance recipients;

(ii) Yearly for general assistance or SSI recipients when we decide the need is not likely to change; or

(iii) More frequently if we expect your circumstances to change;))

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

AMENDATORY SECTION (Amending WSR 00-15-053, filed 7/17/00, effective 9/1/00)

WAC 388-473-0020 ((Restaurant)) When do we authorize meals as an ongoing additional requirement((:))? ((We authorize benefits for restaurant meals when we decide you are:

(1) Physically or mentally unable to prepare meals;

(2) A roomer and meals are not provided or your housing arrangement does not provide for or allow cooking; or

(3) Homeless)) (1) We authorize additional requirement benefits for meals when we decide all of the following conditions are true:

(a) You meet the criteria in WAC 388-473-0020;

(b) You are physically or mentally impaired in your ability to prepare meals; and

(c) Getting help with meals would meet your nutrition or health needs and is not available to you through another federal or state source; such as the community options program entry system (COPEs), Medicaid personal care (MPC), or informal support, such as a relative or volunteer.

(2) When we decide to provide meals as an additional requirement, we choose whether to authorize this benefit as restaurant meals or home-delivered meals.

(3) We authorize restaurant meals when:

(a) You are unable to prepare some of your meals;

(b) You have some physical ability to leave your home; and

(c) Home-delivered meals are not available or would be more expensive.

(4) We authorize home-delivered meals when:

(a) You are unable to prepare any of your meals;

(b) You are physically limited in your ability to leave your home; and

(c) Home-delivered meals are available.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-473-0030	Home-delivered meals as an ongoing additional requirement.
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WSR 05-19-060

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 16, 2005, 11:55 a.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: To amend WAC 388-406-0055 When do my benefits start?, 388-416-0005 How long can I get Basic Food?, and 388-418-0005 How will I know what changes I must report? In addition, to create new WAC 388-489-0005 Who is eligible for transitional food assistance?, 388-489-0010 How is my transitional food assistance benefit calculated?, 388-489-0015 How long will my family receive transitional food assistance?, 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?, and 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period? These rule changes are needed to establish eligibility for the transitional food assistance (TFA) program for families that leave temporary assistance for needy families (TANF), state family assistance (SFA), and tribal TANF programs. The rules also establish the interaction between TFA and other food programs administered by the department under the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0055, 388-416-0005, and 388-418-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.-010.

Adopted under notice filed as WSR 05-16-054 on July 28, 2005.

Changes Other than Editing from Proposed to Adopted Version: None. Only editorial changes have been made to the proposed version.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 3, 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 5, Amended 3, Repealed 0.

Date Adopted: September 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

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

- (1) Cash assistance, your benefits start:
 - (a) The date we have enough information to make an eligibility decision; or
 - (b) No later than the thirtieth day for TANF, SFA, or RCA; or
 - (c) No later than the forty-fifth day for general assistance (GAU).
- (2) Basic Food, your benefits start from the date you applied unless:
 - (a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;
 - (b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:
 - (i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or
 - (ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.
 - (c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the first day of the month following the month you applied for benefits. We start your benefits from this date even if we denied your application for Basic Food.

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

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

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

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

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

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

Reviser's note: The typographical 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.

AMENDATORY SECTION (Amending WSR 05-08-124, filed 4/5/05, effective 6/1/05)

WAC 388-416-0005 How long can I get Basic Food?

(1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to:

- (a) **Six months** if your AU:
 - (i) Includes an able-bodied adult without dependents (ABAWD) who receives Basic Food in your AU and your AU does not live in an exempt area as described in WAC 388-444-0030;
 - (ii) Includes a person who receives ADATSA benefits as described in chapter 388-800 WAC;
 - (iii) Is considered homeless under WAC 388-408-0050; or
 - (iv) Includes a migrant or seasonal farmworker as described under WAC 388-406-0021.
- (b) **Twenty-four months** if all adults in your AU are elderly persons or individuals with disabilities and no one in your AU has earned income.

(c) **Twelve months** if your AU does not meet any of the conditions for six or twenty-four months.

(2) If you receive Transitional Food Assistance, we set your certification period as described under WAC 388-489-0015.

(3) If your AU is homeless or includes an ABAWD when you live in a nonexempt area, we may shorten your certification period.

~~((3))~~ (4) We terminate your Basic Food benefits when:

- (a) We get proof of a change that makes your AU ineligible; or
- (b) We get information that your AU is ineligible; and
- (c) You do not provide needed information to verify your AU's circumstances.

AMENDATORY SECTION (Amending WSR 05-09-021, filed 4/12/05, effective 6/1/05)

WAC 388-418-0005 How will I know what changes I must report? You must report changes to the department based on the kinds of assistance you receive. The set of changes you must report for people in your assistance unit under chapter 388-408 WAC is based on the benefits you receive that require you to report the most changes. It is the first program that you receive benefits from in the list below.

For example:

If you receive Long Term Care and Basic Food benefits, you tell us about changes based on the Long Term Care requirements because it is the first program in the list below you receive benefits from.

(1) If you receive Long Term Care benefits such as Basic, Basic Plus, Chore, Community Protection, COPES, nursing home, Hospice, or Medically Needy Waiver, you must tell us if you have a change of:

- (a) Address;

- (b) Marital status;
- (c) Living arrangement;
- (d) Income;
- (e) Resources;
- (f) Medical expenses; and
- (g) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

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

- (a) You move;
- (b) A family member moves into or out of your home;
- (c) Your resources change; or
- (d) Your income changes. This includes the income of you, your spouse or your child living with you.

(3) If you receive Basic Food and all adults in your assistance unit are elderly persons or individuals with disabilities and have no earned income, you need to tell us if:

- (a) You move;
- (b) You start getting money from a new source;
- (c) Your income changes by more than fifty dollars;
- (d) Your liquid resources, such as your cash on hand or bank accounts, are more than two thousand dollars; or
- (e) Someone moves into or out of your home.

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

- (a) You move;
- (b) Someone moves out of your home;
- (c) Your total gross monthly income goes over the:

(i) Payment standard under WAC 388-478-0030 if you receive general assistance; or

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

(d) You have liquid resources more than four thousand dollars; or

- (e) You have a change in employment. Tell us if you:
 - (i) Get a job or change employers;
 - (ii) Change from part-time to full-time or full-time to part-time;
 - (iii) Have a change in your hourly wage rate or salary; or
 - (iv) Stop working.

(5) If you receive Family Medical benefits, you need to tell us if:

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

(6) ~~((If you receive Children's Medical benefits, you need to tell us if:~~

- ~~(a) You move; or~~
- ~~(b) A family member moves out of the house.~~
- ~~(7))~~ If you receive Basic Food benefits, you need to tell us if:

- (a) You move;
- (b) Your total gross monthly income is more than the gross monthly income limit under WAC 388-478-0060; or

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

(7) If you receive Children's Medical benefits, you need to tell us if:

(a) You move; or

(b) A family member moves out of the house.

(8) If you receive Pregnancy Medical benefits, you need to tell us if:

(a) You move; or

(b) You are no longer pregnant.

(9) If you receive other medical benefits, you need to tell us if:

(a) You move; or

(b) A family member moves out of the home.

(10) If you receive Transitional Food Assistance, you do not have to report any changes in your circumstances.

NEW SECTION

WAC 388-489-0005 Who is eligible for Transitional Food Assistance? If your family stops receiving Temporary Assistance for Needy Families cash benefits, including benefits from a tribal program, you will be eligible for transitional food assistance for up to five months if you meet all the following eligibility requirements:

(1) Your family was receiving Basic Food at the time we determined you were no longer eligible for Temporary Assistance for Needy Families;

(2) After your family stops receiving Temporary Assistance for Needy Families, no other member of your Basic Food assistance unit continues to receive Temporary Assistance for Needy Families;

(3) Your family did not move out of the State of Washington (WAC 388-468-0005);

(4) Your family was not in sanction status at the time your Temporary Assistance for Needy Families grant ended. Sanction status means:

(a) We reduced or stopped your family's Temporary Assistance for Needy Families grant payment because a family member is not:

(i) Meeting WorkFirst Program requirements (WAC 388-310-1600); or

(ii) Cooperating with the Division of Child Support (WAC 388-422-0100); or

(b) We decided that a member of your family was not eligible for Temporary Assistance for Needy Families because the member:

(i) Failed to meet teen parent living arrangement (WAC 388-486-0005) or teen parent school attendance requirements (WAC 388-410-0010); or

(ii) Was convicted of unlawful practices (WAC 388-446-0005) or for receiving Temporary Assistance for Needy Families in two or more states at the same time (WAC 388-446-0010); or

(c) If you are receiving Temporary Assistance for Needy Families benefits from a tribal program, your family's grant is reduced or stopped for a reason that is the same as one of the reasons listed in (4)(a) or (4)(b) of this section.

(5) At the time your family's Temporary Assistance for Needy Families grant ended, your Basic Food assistance unit did not become ineligible because:

(a) You were applying for recertification of your Basic Food benefits and refused to cooperate with the application process; or

(b) All members are ineligible for Basic Food for the reasons stated in WAC 388-489-0025(3).

(6) There is no limit to the number of times your family may leave Temporary Assistance for Needy Families and receive Transitional Food Assistance.

Reviser's note: The typographical 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 388-489-0010 How is my Transitional Food Assistance benefit calculated? (1) We base your Transitional Food Assistance benefit amount on the regular monthly benefit allotment issued to your Basic Food assistance unit for the last month your family received Temporary Assistance for Needy Families. We will not count your last Temporary Assistance for Needy Families grant payment when we calculate your Transitional Food Assistance benefit amount. For example:

(a) If your Basic Food assistance unit's only income was Temporary Assistance for Needy Families, the Transitional Food Assistance benefit will be the amount your household would have received if you had no income.

(b) If your Basic Food benefit was calculated using Temporary Assistance for Needy Families plus income from another source, we will count only the income from the other source when calculating the Transitional Food Assistance amount.

(2) We will adjust your Transitional Food Assistance benefits if:

(a) Someone who gets Transitional Food Assistance with you leaves your assistance unit and is found eligible to receive Basic Food in another assistance unit. We will reduce your Transitional Food Assistance based on the number of persons who left your assistance unit and become eligible in another Basic Food assistance unit.

(b) A change to the maximum allotment for Basic Food under WAC 388-478-0060 results in an increase in benefits for Basic Food assistance units.

(c) You got an overpayment of Basic Food benefits and we need to adjust the amount we deduct from your monthly benefits to repay the overpayment as required in WAC 388-410-0033. This includes:

- (i) Starting a new monthly deduction;
- (ii) Changing the amount of the monthly deduction; and
- (iii) Ending the monthly deduction when the amount you owe has been paid off.

NEW SECTION

WAC 388-489-0015 How long will my family receive Transitional Food Assistance? If your Basic Food assistance unit is eligible for Transitional Food Assistance according to WAC 388-489-0005, you will receive Transitional Food Assistance for up to five months after your family leaves Temporary Assistance for Needy Families.

(1) If you stopped getting Temporary Assistance for Needy Families from the department, you are eligible for transitional benefits beginning the month after your family received their last grant.

(2) If you stopped receiving Tribal TANF benefits, you are eligible for transitional benefits:

(a) With the next monthly issuance after we update your case to show you no longer have Tribal TANF income, if the Tribal TANF end date is the end of the current month or the end of a prior month; or

(b) On the first of the month following the Tribal TANF end date, if the Tribal TANF end date is the end of a future month.

(3) If necessary, we will extend or shorten your Basic Food assistance unit's current certification period to match the five-month transition period.

(4) You may choose to end your five-month transition period early by submitting an application for regular Basic Food under WAC 388-489-0020 or by asking us to terminate your benefits.

(5) We send you a notice before the end of your five-month transition period so you can re-apply for regular Basic Food benefits and continue to receive benefits without interruption as described in WAC 388-434-0010.

(6) We may terminate your Transitional Food Assistance early for the reasons stated in WAC 388-489-0025.

NEW SECTION

WAC 388-489-0020 Am I required to report changes in my household's circumstances while on Transitional Food Assistance? (1) If you only receive Transitional Food Assistance, you are not required to report any changes in your household circumstances.

(2) If you receive benefits from another cash or medical assistance program, you must meet the reporting requirements for the other program as required by WAC 388-418-0005. Except for changes listed under WAC 388-489-0025, the changes you report for the other program will not affect your family's eligibility for Transitional Food Assistance.

(3) If your family experiences a change in circumstances during your five-month transition period, and you think that you may be eligible for more food assistance, you may submit an application for the regular Basic Food program. Examples of such changes include the loss of income by a person who gets Transitional Food Assistance with you or adding a new person to your household.

(a) If you submit a new application, we will determine your eligibility for Basic Food and allow you to choose if you want to remain on Transitional Food Assistance or receive regular Basic Food benefits.

(b) If you choose to go back on Basic Food and are found eligible, we will start your new benefit amount on the first day of the month after we receive your application for Basic Food. If you have already received Transitional Food Assistance for this month and are eligible for more assistance on the Basic Food program, we will pay you the additional amount.

NEW SECTION

WAC 388-489-0025 Can my Transitional Food Assistance benefits end before the end of my five-month transition period? Your Transitional Food Assistance benefits will end early if:

- (1) Someone who gets Transitional Food Assistance with you applies and is approved for Temporary Assistance for Needy Families while still living in your home. You may reapply to have your eligibility for Basic Food determined;
- (2) We learn that you and your family are no longer residing in the State of Washington; or
- (3) **All members** of your household are eligible to get Basic Food for any of the following reasons:
 - (a) Refusal to cooperate with Quality Assurance (WAC 388-464-0001);
 - (b) Transfer of property to qualify for Basic Food assistance (WAC 388-488-0010);
 - (c) Intentional Program Violation (WAC 388-466-0015 and WAC 388-446-0020);
 - (d) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);
 - (e) Alien status (WAC 388-424-0020 and WAC 388-424-0025);
 - (f) Employment and training requirements (WAC 388-444-0055 and WAC 388-444-0075);
 - (g) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);
 - (h) Student status (WAC 388-482-0005);
 - (i) Living in an institution where residents are not eligible for Basic Food (WAC 388-408-0040); or
 - (j) Deceased.

WSR 05-19-061**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed September 16, 2005, 11:57 a.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: To amend WAC 388-408-0035 Who is in my assistance unit for Basic Food?, in order to clarify when food purchase and preparation arrangements require mandatory assistance unit membership; specifically, when a household member buys food or prepares meals together with the Basic Food assistance unit, but does not necessarily do both.

Additional major amendments define certain assistance unit composition to support the department's implementation of transitional food assistance for families leaving temporary assistance for needy families (TANF), state family assistance (SFA), and tribal TANF programs. Implementation of transitional food assistance by November 2005 is required by the enactment of RCW 74.08A.010 for families leaving TANF. Other minor proposed changes have been added to improve rule clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-408-0035.

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

Adopted under notice filed as WSR 05-16-110 on August 2, 2005.

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

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

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

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

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

Date Adopted: September 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-14-040, filed 6/29/04, effective 7/30/04)

WAC 388-408-0035 Who is in my assistance unit for Basic Food? (1) For Basic Food, a person must be in your assistance unit (AU) if they live in the same home as you and:

(a) ~~((Usually buy and fix food))~~ Regularly buy food or prepare meals with you; or

(b) You provide meals for them and they pay less than a reasonable amount for meals.

(2) If the following people live with you, they must be in your AU even if you do not usually buy ~~((and fix))~~ or prepare food together:

(a) Your spouse;

(b) Your parents if you are under age twenty-two (even if you are married);

(c) Your children under age twenty-two;

(d) The parent of a child who must be in your AU;

(e) A child under age eighteen who doesn't live with their parent unless the child:

(i) Is emancipated;

(ii) Gets a TANF grant in their own name; or

(iii) Is not financially dependent on an adult in the AU because they get and have control of income of at least the TANF payment standard under WAC 388-478-0020(2) before taxes or other withholdings.

(3) If any of the people in subsections (1) or (2) already receive Transitional Food Assistance under chapter 388-489 WAC, you can only receive benefits if they choose to reapply for Basic Food as described in WAC 388-489-0020.

(4) If you live in an institution where you may be eligible for Basic Food under WAC 388-408-0040, we decide who is in your AU as follows:

(a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your AU under subsection (2) of this rule; or

(b) If you apply for benefits on your own, we include you, anyone who must be in your AU under subsection (2) of this rule, and other residents you choose to apply with.

~~((4))~~ (5) Anyone who must be in your AU under subsection (1) or (2) is an ineligible AU member if they:

(a) Are disqualified for an intentional program violation (IPV) under WAC 388-446-0015;

(b) Do not meet ABAWD work requirements under WAC 388-444-0030.

(c) Do not meet work requirements under WAC 388-444-0055;

(d) Do not provide a social security number under WAC 388-476-0005;

(e) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

(f) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

~~((5))~~ (6) If your AU has an ineligible member:

(a) We count the ineligible member's income ~~((+))~~ as part of your AU's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your AU; and

(c) We do not use the ineligible member to determine your AU's size for the maximum income amount or allotment under WAC 388-478-0060.

~~((6))~~ (7) If the following people live in the same home as you, you can choose if we include them in your AU:

(a) A permanently disabled person who is age sixty or over and cannot make their own meals if the total income of everyone else in the home (not counting the elderly and disabled person's spouse) is not more than the one hundred sixty-five percent standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your AU, the boarder cannot get Basic Food benefits in a separate AU;

(c) A person placed in your home for foster care. If you do not include this person in your AU, they cannot get Basic Food benefits in a separate AU;

(d) Roomers; or

(e) Live-in attendants even if they buy ~~((and fix))~~ or prepare food with you.

~~((7))~~ (8) If someone in your AU ~~((is))~~ moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your AU, unless you receive Transitional Food Assistance.

~~((8))~~ (9) For Transitional Food Assistance, your TFA AU includes the people who were in your Basic Food AU for the last month you received:

(a) Temporary Assistance for Needy Families;

(b) State Family Assistance; or

(c) Tribal TANF benefits.

(10) If someone received Basic Food or food stamps in another AU or another state, they cannot receive benefits in your AU for the same period of time with one exception. If you already received Basic Food ~~((or))~~ , food stamp, or Transitional Food Assistance benefits:

(a) In another state, you are not eligible for Basic Food for the period of time covered by the benefits you received from the other state; or

(b) In another AU, you are not eligible for Basic Food in a different AU for the same period of time;

(c) In another AU, but you left the AU to live in a shelter for battered women and children under WAC 388-408-0045, you may be eligible to receive benefits in a separate AU.

~~((9))~~ (11) The following people who live in your home are not members of your AU. If they are eligible for Basic Food, they may be a separate AU:

(a) Someone who usually buys and ~~((fixes))~~ prepares food separately from your AU if they are not required to be in your AU; or

(b) Someone who lives in a separate residence.

~~((10))~~ (12) A student who is ineligible for Basic Food under WAC 388-482-0005 is not a member of your AU.

WSR 05-19-062

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 16, 2005, 11:58 a.m., effective October 17, 2005]

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

Purpose: Amend WAC 388-450-0195 Utility allowances for Basic Food programs, to update utility standards for the Washington Basic Food program. This annual adjustment is necessary to comply with federal requirements for the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195.

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

Other Authority: 7 C.F.R. § 273.9, Income and deductions.

Adopted under notice filed as WSR 05-16-108 on August 2, 2005.

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: September 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-09-087, filed 4/19/05, effective 6/1/05)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "**utilities**" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$(278)) <u>299</u>
2	\$(287)) <u>308</u>
3	\$(295)) <u>317</u>
4	\$(304)) <u>326</u>
5	\$(312)) <u>335</u>
6 or more	\$(321)) <u>344</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred (~~twenty-two~~) thirty-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~thirty-seven~~) thirty-eight dollars.

**WSR 05-19-072
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 16, 2005, 4:34 p.m., effective October 17, 2005]

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

Purpose: The 2005 Washington state legislature required OSPI to develop a transition process to move the school bus replacement system to a method using a five year average of school bus prices. Additional changes reflect the implementation of the "menu style" bidding process provided in the 2004 Washington state operating budget and made permanent by the passage in the 2005 legislative session of HB 1485. There are additional changes of a technical nature.

Citation of Existing Rules Affected by this Order: Amending WAC 392-142-185, 392-142-213, 392-142-225, 392-142-240, 392-142-245, 392-142-250, 392-142-255, and 392-142-265.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 05-15-128 on July 19, 2005.

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 6, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 8, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 12, 2005.

Marty Daybell
for Dr. Terry Bergeson
Superintendent of
Public Instruction

NEW SECTION

WAC 392-142-171 Definition—System price. The system price of an individual school bus is the price used to calculate the replacement system payment in a given school year.

NEW SECTION

WAC 392-142-172 Definition—Average price. The average price for an individual school bus is calculated by adding the current year state-determined purchase price to the total of the previous four years' state-determined purchase prices and dividing by five. School bus categories no longer available or no longer supported use the historic prices for those categories in years when such bus categories were available or supported.

NEW SECTION

WAC 392-142-174 Definition—Weighting factor. The weighting factor for an individual school bus is calculated by subtracting the 2005 average price from the 2005 state-determined purchase price and dividing by two.

NEW SECTION

WAC 392-142-176 Definition—2005 weighted price. The 2005 weighted price for an individual school bus is calculated by adding the weighting factor to the 2005 average price.

NEW SECTION

WAC 392-142-178 Definition—2006 weighted price. The 2006 weighted price for an individual school bus is calculated by adding the weighting factor to the 2006 average price.

culated by adding one half the weighting factor to the 2005 system price.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-185 Definition—((Imputed)) Assumed interest earnings. As used in this chapter, "~~((imputed))~~ assumed interest earnings" means the sum of interest which is assumed to be earned on moneys assumed to be available in the transportation vehicle fund from state payments and accumulated interest earnings. The rate used shall be the average of the treasury bill rate for ninety-day notes during the previous state fiscal year calculated on the basis of simple interest.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-213 Purchase of school buses by school districts. (1) School districts may purchase school buses directly from ~~((the))~~ any school bus dealer who has provided ~~((the lowest competitive))~~ an accepted price quote in each school bus category without regard to RCW 28A.335.190.

(2) School districts that do not purchase school buses in accordance with subsection (1) of this section may conduct their own competitive bid process in accordance with RCW 28A.335.190. School districts that choose to conduct their own bid shall:

(a) Use vendor bid proposal forms provided by the superintendent of public instruction.

(b) Prepare a summary of all bids received for retention in school district files and submission to the superintendent of public instruction.

(3) School buses which have been acquired by school districts or educational service districts, in accordance with subsection (1) or (2) of this section, are entitled to reimbursement payments for school bus replacement in accordance with this chapter.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-225 Placement of used school buses on state replacement or depreciation schedules. A used school bus shall be placed on the state replacement or depreciation schedule as if it had been issued a school bus operation permit on the first of September in the year of manufacture, including an estimate by the superintendent of public instruction of:

(1) Prior school years total state replacement or depreciation payments;

(2) ~~((Imputed))~~ Assumed interest earnings (if purchased by a school district); and

(3) Salvage value (if purchased by a school district).

NEW SECTION

WAC 392-142-231 Calculation of system price. The system price of a school bus shall be calculated as following:

(1) For the 2005-06 school year, the system price for an individual school bus shall be determined by selecting the first condition that applies, as follows:

(a) If a school bus is in its final year on the replacement system, the system price is the state-determined purchase price.

(b) If the average price for the school bus is greater or equal to the 2004 or the 2005 state-determined purchase price, the system price is the average price.

(c) If the average price for the school bus is less than the 2004 state-determined purchase price, the system price is the 2005 weighted price.

(d) If the 2005 weighted price for the school bus is less than the 2004 actual price, the system price is the 2004 actual price.

(2) For the 2006-07 school year, the system price for an individual school bus shall be determined by selecting the first statement that applies, as follows:

(a) If a school bus is in its final year on the replacement system, the system price is the actual price.

(b) If the 2005 system price for the bus was the 2005 average price, the 2006 system price is the 2006 average price.

(c) If the 2006 average price for the school bus is greater or equal to the 2005 system price, the system price is the 2006 average price.

(d) If the 2006 average price for the school bus is less than the 2005 system price, the system price is the 2006 weighted price.

(3) Effective September 1, 2007, the system price for an individual school bus is the state-determined purchase price if a school bus is in its final year on the replacement system. For a school bus not in its final year on the replacement system, the system price is the average price.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-240 Calculation of annual state replacement payment for district-owned school buses. The superintendent of public instruction shall calculate each school district's annual state replacement payment for district-owned school buses as follows:

(1) For district-owned school buses issued a school bus operation permit prior to the fifteenth of ~~((the))~~ any month of the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the ~~((state determined purchase))~~ system price by the useful lifetime in months as determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For school buses issued a school bus operation permit prior to the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the ~~((state determined purchase))~~ system price by the useful lifetime in months determined in (a) of this subsection;

(c) Multiply the result obtained in (b) of this subsection by the total number of months the school bus has been on the replacement schedule including the months for the current school year;

(d) Subtract from the result obtained in (c) of this subsection the total school bus replacement payments made in prior school years;

(e) Subtract from the result obtained in (c) of this subsection the ~~((imputed))~~ assumed interest earnings; and

(f) Subtract from the result obtained in (e) of this subsection the salvage value of the school bus if the current school year is the final year of the vehicle's useful life.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-245 Calculation of annual state depreciation payment for contractor-owned school buses. The superintendent of public instruction shall calculate each school district's state depreciation payment for contractor-owned school buses as follows:

(1) For contractor-owned school buses issued a school bus operation permit prior to the fifteenth of the month of the current school year:

(a) Place each bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state determined purchase price by the useful lifetime in months determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For contractor-owned school buses issued a school bus operation permit in a prior school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155; ~~((and))~~

(b) Divide the state-determined purchase price at the time the school bus was purchased by the useful lifetime in months for the appropriate school bus category set forth in WAC 392-142-155~~((:))~~;

(c) Calculate the total number of months the bus is eligible for depreciation payment in the current school year; and

(d) Multiply the amount calculated in (b) of this subsection by the number of months calculated in (c) of this subsection.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-250 Allocation of state replacement or depreciation payment. The superintendent of public instruction shall apportion school bus replacement or depreciation payments each school year calculated as follows:

(1) ~~((Pursuant to WAC 392-142-240 in:))~~ For school district-owned vehicles:

(a) The September apportionment payment for those school buses issued school bus operating permits in prior school years; or

(b) The first apportionment payment after the issuance of the school bus operating permit for school buses purchased in the current school year; or

(2) ~~((Pursuant to WAC 392-142-245))~~ For contractor-owned vehicles: According to the schedule set forth in RCW 28A.510.250.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-255 Deposit of payments in transportation vehicle fund. School districts shall deposit proceeds for the rent, sale, or lease of school buses and replacement payments ~~((allocated pursuant to WAC 392-142-240))~~ for school district-owned vehicles in the transportation vehicle fund. School districts shall not deposit school bus depreciation payments ~~((allocated pursuant to WAC 392-142-245))~~ for contractor-owned vehicles in the transportation vehicle fund. For school buses placed on the reimbursement system between September 1, 1975, and August 31, 1980, the superintendent of public instruction shall recover ninety percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation. For school buses placed on the reimbursement system between September 1, 1980, and August 31, 1982, the superintendent of public instruction shall recover one hundred percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation.

AMENDATORY SECTION (Amending WSR 95-17-011, filed 8/4/95, effective 9/4/95)

WAC 392-142-265 Maintenance and operation. (1) To the extent possible, school districts shall operate vehicles not less than the number of years of useful lifetime now, or hereafter, assigned to the category of vehicles by the superintendent of public instruction.

(2) A school bus that continues to possess a valid operation permit and operates its useful vehicle life shall be considered to be properly maintained in accordance with general accepted maintenance and operation standards. A school bus which does not operate its useful vehicle life shall be considered as not being properly maintained in accordance with generally accepted maintenance and operation standards unless proven otherwise by the school district. Prima facie evidence of such proof shall include ~~((required changes in the category of bus, or))~~ unforeseen ~~((natural))~~ events which shorten the useful vehicle life, including but not limited to, fire, flood, explosion, storm, earthquake, or volcanic eruption. ~~((Generally accepted maintenance and operation standards are outlined in the School Bus Maintenance Guide published by the superintendent of public instruction.))~~

(3) If a district fails to follow generally accepted standards of maintenance and operation or disposes of a bus prior to the end of its useful life time ~~((as set forth in WAC 392-142-155))~~, the superintendent of public instruction shall ~~((penalize the school district by deducting from any future allocations or state payments authorized under this chapter an amount equal to the original cost of the vehicle multiplied by the fraction of the useful lifetime the vehicle failed to operate))~~ discontinue reimbursement system payments, including recovering the prorated amount of the current year payment according to the number of months in the current year the bus was not operated.

WSR 05-19-073
PERMANENT RULES
COMMISSION ON
JUDICIAL CONDUCT

[R.D. 05-01—Filed September 19, 2005, 11:25 a.m., effective October 20, 2005]

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

Purpose: To amend existing Rule 24 (b)(8) of the commission's rules of procedure relating to participation in commission deliberations and decisions by a member of the commission who has not heard all of the evidence.

Citation of Existing Rules Affected by this Order: Amending CJCRP 24.

Statutory Authority for Adoption: Washington Constitution Article IV, Section 31(10).

Other Authority: Chapter 2.64 RCW.

Adopted under notice filed as WSR 05-13-124 on June 20, 2005.

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: September 9, 2005.

Marianne Connelly
 Commission Chair

COMMISSION ON JUDICIAL CONDUCT
 RULES OF PROCEDURE (CJCRP)

AMENDATORY SECTION (Amending Order 99-01, filed 8/13/99)

RULE 24. HEARING

(a) Scheduling. Upon receipt of respondent's answer or upon expiration of the time to answer, the commission shall schedule a public hearing and notify disciplinary counsel and respondent of the date, time, and place of the hearing. Respondent will be provided at least fourteen days notice of hearing, which will also include the name or names of the commission members and the presiding officer, if any.

(b) Conduct of hearing.

(1) All testimony shall be under oath.

(2) Disciplinary counsel shall present the case in support of the statement of charges.

(3) Disciplinary counsel may call respondent as a witness.

(4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

(5) The hearing shall be recorded verbatim. Whenever a transcript is requested by respondent, disciplinary counsel, or a member of the commission, a transcript of the hearing shall be produced at the requesting party's expense.

(6) Counsel may recommend and argue for a discipline appropriate to the misconduct supported by the evidence, including argument on aggravating and mitigating factors.

(7) Disciplinary counsel and respondent may submit their respective proposed findings, conclusions, and recommendations for discipline or order of dismissal to the commission.

(8) Where a member of the commission has not heard all the evidence, that member shall not participate in any deliberations or decisions (~~(until he or she personally considers the whole record, or portion of the hearing from which that member was absent)~~).

(9) At least six members, or their alternates, must continually be present during presentation of testimony at the hearing.

(c) Dismissal or recommendation for discipline. The commission shall dismiss the case, discipline respondent, or in the case of incapacity, recommend to the supreme court the retirement of respondent.

(d) Submission of the report. After the hearing, the commission shall file the record of the proceeding and a decision setting forth written findings of fact, conclusions of law, any minority opinions, and the order, within ninety days following the evidentiary hearing or after the filing of the transcript if one is requested, unless the presiding officer extends the time. The decision shall be announced in open session. If personal attendance is required, respondent shall have at least fourteen days notice of the announcement, unless otherwise agreed. A copy of the decision shall be served upon respondent.

(e) Motion for reconsideration. The commission decision is final fourteen days after service unless a motion for reconsideration is filed by respondent or disciplinary counsel. A motion for reconsideration, if filed, shall be specific and detailed, with appropriate citations to the record and legal authority. Any response to the motion must be filed within fourteen days after service. The motion will be decided without oral argument unless requested by the commission. If the motion for reconsideration is denied, the decision is final when the order denying the motion is filed. If the motion for reconsideration is granted, the reconsidered decision is final when filed in the commission's office.

WSR 05-19-080
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed September 20, 2005, 9:18 a.m., effective October 21, 2005]

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

Purpose: Amend chapter 374-60 WAC to be consistent with legislative changes made during the 2005 legislative session to chapter 70.148 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 374-60-010, 374-60-020, 374-60-060, 374-60-070, 374-60-080, 374-60-090, 374-60-100, 374-60-110, and 374-60-120.

Statutory Authority for Adoption: RCW 70.148.130.

Adopted under notice filed as WSR 05-15-109 on July 18, 2005.

Changes Other than Editing from Proposed to Adopted Version: Changed the definition of "remote rural communities." Added language to the definition of "sole source" to include reference to RCW 70.148.130 (20)(b) and kept the five-mile requirement rather than changing it to ten. Removed language to reduce redundancies and for better clarification.

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 9, 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 9, 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 9, Repealed 0.

Date Adopted: September 20, 2005.

Lynn Gooding
Acting Director

AMENDATORY SECTION (Amending WSR 91-24-048, filed 11/27/91, effective 12/28/91)

WAC 374-60-010 Authority and purpose. The purpose of this chapter is to clarify eligibility criteria and requirements for ~~((the conduct of))~~ the underground storage tank community assistance program as set forth in chapter 70.148 RCW.

This chapter recognizes the hardship posed by loss of local sources of petroleum products faced by rural and remote communities, local governments and rural hospitals due to an inability to meet U.S. Environmental Protection Agency and department of ecology regulations and requirements for petroleum underground storage tanks. The underground storage tank community assistance program will award grants to qualifying privately owned and operated sources of petroleum products, local government entities, and rural hospitals meeting vital government, public health, education, recreation, or safety needs for replacement or upgrading and, if required, clean up of underground petroleum storage tank sites.

AMENDATORY SECTION (Amending Order 93-01, filed 1/27/93, effective 2/27/93)

WAC 374-60-020 Definitions. (1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third party payor, as determined by the Washington state hospital commission. (Defined in RCW 70.39.020.)

(3) "Cleanup" means any remedial action taken that complies with WAC 173-340-450 and any remedial action taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-360.

(4) "Community assistance program" means the program established by the Washington state legislature under the provision of chapter 70.148 RCW to provide financial assistance grants to:

(a) Private owners and operators of underground petroleum storage tanks;

(b) Local governmental entities~~((s))~~; and~~((s))~~

(c) Rural hospitals.

(5) "Director" means the director of the Washington state pollution liability insurance agency.

(6) "Local government entity" means a unit of local government, either general purpose or special purpose, and includes but is not limited to, counties, cities, towns, school districts and other governmental and political subdivisions. The local government unit must perform a public purpose and either:

(a) Receive an annual appropriation;

(b) Have taxing power; ~~((and))~~ or

(c) Derive authority from state or local government law enforcement power.

(7) "Operator" means any person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank ~~((system))~~. (Defined in RCW 70.148-010.)

(8) "Owner" means any person who owns a petroleum underground storage tank. (Defined in RCW 70.148.010.)

(9) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute) and includes gasoline, kerosene, heating oils and diesel fuels. (Defined in RCW 70.148.010.)

(10) "Private owner or operator" means any person, corporation, partnership or business that owns or operates one or more regulated petroleum underground storage tanks maintained for the purpose of providing petroleum products for retail sale to the public.

(11) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, ground water, surface water, subsurface soils, or the atmosphere. (Defined in RCW 70.148.010.)

(12) "Remote rural community" means ~~((a geographic area outside the boundaries of an urban area of 10,000 or more of population, and which is either (1) in an incorporated city or town located at a distance from an incorporated city or~~

~~town or urban area of 10,000 or more of population or, (2) in an area outside of an incorporated city or town and at a distance from an incorporated city or town or urban area of 10,000 or more of population)) the UST site cannot be located within a city, town or urban area with a population of ten thousand or more.~~

(13) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark and Spokane;

(b) Areas within a twenty-five mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla. (Defined in RCW 18.89.020.)

(14) "Serious financial hardship" means:

(a) For a private sector applicant, that the applicant can provide conclusive evidence that the business and/or business operator(s), business owner(s) having a 20% or greater interest in the business or other persons with a beneficial interest in the business' profits do not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank ~~((system))~~ site into compliance with all federal and state underground storage tank regulations and requirements ~~((scheduled to be in effect on December 22, 1998.))~~;

(b) For a public sector applicant, that the applicant can provide conclusive evidence that the unit of government does not have adequate fund balances, debt capacity or other local revenue generating options to bring a petroleum underground storage tank ~~((system))~~ site into compliance with all federal and state underground storage tank regulations and requirements ~~((scheduled to be in effect on December 22, 1998.))~~; and

(c) For a rural hospital, that the applicant can provide conclusive evidence that the rural hospital does not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank ~~((system))~~ site into compliance with all federal and state underground storage tank regulations and requirements ~~((scheduled to be in effect on December 22, 1998.))~~.

(15) "Sole source" means the only retailer of petroleum products to the motoring public that is located in a city or town or, if the retailer is remote from a community, the only business within a minimum of a five-mile radius where the motoring public can purchase petroleum products. For retailers that meet the requirements of RCW 70.148.130 (20)(b), the business must be the only one within a minimum of a ten-mile radius.

(16) "Underground storage tank (UST)" means any one or combination of tanks, including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. (Defined in RCW 70.148.010.)

(17) "UST site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property with a contiguous ownership that is associated with the use of the tanks. (Defined in WAC 173-360-120.)

(18) "Vital local government, public health, education, recreation or safety need" means an essential or indispensable service provided by government for citizens.

AMENDATORY SECTION (Amending Order 93-01, filed 1/27/93, effective 2/27/93)

WAC 374-60-060 Applications. (1) Applications for assistance under the underground storage tank community assistance program shall be made on forms furnished by the agency in accordance with their instructions. All applications shall be legible, contain all the information required and shall be accompanied by all required documents and exhibits.

(a) Applications which are illegible, incomplete, or which fail to include all necessary information, documents or exhibits, or which are otherwise not in compliance with these rules, may be rejected by the agency.

(b) The agency may ignore defects in applications which are immaterial or insubstantial.

(2) Separate and different applications will be prepared for:

- (a) Private owners and operators;
- (b) Local government entities; and
- (c) Rural hospitals.

(3) Applications will be prepared in two parts:

(a) Part I of the application is designed to determine if the applicant meets certain eligibility criteria established for the program.

(b) Part II of the application is designed to determine if the applicant meets the financial eligibility criteria established for a grant, and requires detailed financial information, submission of a construction proposal, and certification by a local government entity of the vital local government, public health, education, recreation or safety need met by the continued operation of the UST(s).

(4) The director shall provide forms to local government entities for certification that continued operation of UST(s) by the private owners and operators is necessary to meet vital local government, public health, education, recreation or safety needs. Such certification shall consist of a local government resolution certifying:

(a) That other petroleum providers are remote from the community;

~~((b))~~ ~~((That the applicant is capable of faithfully fulfilling the agreement required for financial assistance;))~~

~~((c))~~ The specific vital need or needs the owner or operator meets; and

~~((d))~~ ~~((c))~~ Designating the local official who will be responsible for negotiating the contract for provision of cost-plus petroleum products to the local governmental entity.

(5) The director shall provide forms to local government entities for certification that maintaining continued operation of the petroleum UST(s) owned by the local government meets a vital local public health, education, recreation or safety need. Such certification shall consist of a local govern-

ment resolution certifying that continued operation of the UST(s) meets a vital local government, public health, education, recreation, or safety need.

(6) The director shall provide forms to local government entities for certification that UST(s) operated by rural hospitals meet vital public health, and safety needs. Such certification shall consist of a local government resolution certifying that the continued operation of the UST(s) by the rural hospital is necessary.

AMENDATORY SECTION (Amending Order 93-01, filed 1/27/93, effective 2/27/93)

WAC 374-60-070 Eligibility—Private owners and operators. Private owners and operators, or a combination thereof, of an UST site may be eligible for an underground storage tank community assistance program grant if they meet the following requirements:

~~((a) Be the owner)~~ (1) Own or ~~((operator of))~~ operate an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

~~((b))~~ (2) Own or operate a business ((selling)) that sells or has sold petroleum products to the motoring public in a remote rural area;

~~((c))~~ (3) Demonstrate that the UST(s) is registered with the department of ecology;

~~((d))~~ (4) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

~~((e))~~ (5) Demonstrate that continued operation of the UST(s) meets a vital local government, public health, recreation, or safety need, as evidenced by a local government entity's certification; and

~~((f) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made))~~ (6) Sites with contamination must file a claim with any valid pollution liability insurance policy.

AMENDATORY SECTION (Amending WSR 91-24-048, filed 11/27/91, effective 12/28/91)

WAC 374-60-080 Eligibility—Local government entities. A local government may be eligible for an underground storage tank community assistance program grant if they meet the following requirements:

~~((a))~~ (1) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

~~((b))~~ (2) Demonstrate that the UST(s) is registered with the department of ecology;

~~((c))~~ (3) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

~~((d))~~ (4) Demonstrate that continued operation of the UST(s) meets a vital local government, public health, education, recreation, or safety need~~((; and~~

~~((e) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made. Applicants must apply for insurance with one of the two insurers reinsured by the agency)).~~

AMENDATORY SECTION (Amending WSR 91-24-048, filed 11/27/91, effective 12/28/91)

WAC 374-60-090 Eligibility—Rural hospitals. A rural hospital may be eligible for an underground storage tank community assistance program grant if it meets the following requirements:

~~((a))~~ (1) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

~~((b))~~ (2) Demonstrate that the UST(s) is registered with the department of ecology;

~~((c))~~ (3) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

~~((d))~~ (4) Demonstrate that continued operation of the UST(s) meets a vital local government, public health or safety need as evidenced by a local governmental entity's certification~~((; and~~

~~((e) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made. Applicants must apply for insurance with one of the two insurers reinsured by the agency)).~~

AMENDATORY SECTION (Amending WSR 91-24-048, filed 11/27/91, effective 12/28/91)

WAC 374-60-100 Evaluation. (1) Evaluation of applications for the UST community assistance program will be based on an assessment of eligibility, based on the requirements included in chapter 70.148 RCW.

(2) Applications of private owners and operators will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of both the business and its owner(s) and operator(s) to determine if serious financial hardship exists;

(b) The vital local government ~~((or))~~ public health, education, recreation, or safety need(s) provided by the business; and

(c) Location and type of business.

(3) Applications of local government entities will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of the local government entity to determine if a serious financial hardship exists;

(b) The vital local public health, education, recreation, or safety need(s) met by the continued operation of the UST(s); and

(c) Priority shall be given to local government entities which consolidate multiple operational UST(s) into as few sites as possible.

(4) Applications of rural hospitals will be judged on two criteria. Evaluations will be based on:

(a) The financial condition of the hospital to determine if a serious financial hardship exists; and

(b) The vital local public health or safety need(s) met by the continued operation of the UST(s).

(5) Evaluation of applications will be conducted by a screening team(s) that will assess and score Part I and Part II of the application (and by screening teams that will assess and score Part II of the application). The assessments of the screening team(s) will be compiled and presented (with a recommendation to the agency director. The director shall review applications with the pollution liability insurance agency technical advisory committee and consult with the technical advisory committee prior to the announcement of the awarding of grants) to the agency director for final determination.

AMENDATORY SECTION (Amending WSR 91-24-048, filed 11/27/91, effective 12/28/91)

WAC 374-60-110 Funding. (1) Funds for the UST community assistance program shall be made available from the pollution liability insurance program trust account in accordance with the provision of chapter 70.148 RCW.

(2) ~~((The director may expend no more than fifteen million dollars (\$15,000,000.00) for the UST community assistance program.~~

~~((3))~~ Grants shall be limited to no more than ~~((one hundred fifty thousand dollars (\$150,000.00)))~~ two hundred thousand dollars (\$200,000.00) in value for any one UST site of which amount no more than seventy-five thousand dollars (\$75,000.00) in value may be provided for cleanup of existing contamination caused by petroleum from the tank(s).

~~((4))~~ (3) Grants shall be limited to only that amount necessary to supplement the applicant's financial resources.

~~((5))~~ (4) No grant may be used for any purpose other than for replacement or upgrading of UST(s), or for cleanup of ~~((existing))~~ contamination caused by petroleum from the tank(s). The director may, however, provide financial assistance for the establishment of a new local government UST site if it is the result of consolidation of multiple operational UST sites into as few sites as possible. In such case, the grant shall be only for the amount of construction of the new UST site. The removal of the old UST(s) and any cleanup associated with the removal shall be the responsibility of the local government.

AMENDATORY SECTION (Amending WSR 96-04-005, filed 1/25/96, effective 2/25/96)

WAC 374-60-120 Grant management. (1) Successful applicants will be notified by letter of the award of a grant. Entitlement to a grant is finalized only after a contract has been finalized between the agency and the grant recipient, and a contract has been finalized between the grant recipient and the contractor ~~((performing the replacement or upgrading of the UST(s)))~~.

(a) Contracts may be entered only after all program eligibility requirements have been met, funds are available and the application and evaluation process has been completed to the satisfaction of the agency.

(b) Each contract becomes effective only with the signing of both required contracts. The day of the signing establishes the beginning date of the project. No costs incurred

prior to that date are eligible for payment under the grant unless specific provision is made in the grant contract for such costs.

(2) The contract between the agency and a private owner and/or operator shall contain:

(a) An agreement assuring the state of Washington that the business, including the UST site, will be maintained for the retail sale of petroleum products to the public for at least fifteen (15) years after the grant is awarded;

(b) An agreement to sell petroleum products to local governmental entities on a cost-plus basis;

(c) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology;

(d) An agreement awarding the state of Washington a real property lien ensuring repayment of grant funds should any of the above conditions be violated. Such lien is to be binding on all heirs, successors or assignees of the grantee; and

(e) An agreement that should the grantee or any successor fail to adhere to all the terms of the contract through willful act, the amount of the grant shall immediately become due and payable to the state of Washington.

(3) The contract between the agency and a local government shall contain an agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology.

(4) The contract between the agency and a rural hospital shall contain:

(a) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology; and

(b) An agreement to provide charity care in a dollar amount equivalent to the financial assistance provided under the underground storage tank community assistance program. The period of time for the charity care to be accomplished will be established by the agency in consultation with the department of health, but will not exceed fifteen years.

(5) Contracts between the grantees and contractors shall contain terms covering payments, conditions of work and contaminated soil and water remediation procedures.

(6) If the grantee elects pollution liability insurance as the method for meeting financial responsibility, the insurance policy must name the pollution liability insurance agency as a "loss payee." If another method of demonstrating financial responsibility is selected, there must exist a provision for the agency to place an appropriate encumbrance on that document.

(7) ~~((Annually))~~ ~~((the local government entity that certified the vital local government, public health, education or safety need of the UST(s) must report, on a form provided by the agency, the status of contracts and services.~~

~~((Quarterly))~~, a private owner or operator that receives a grant must submit a report, on a form provided by the agency, of petroleum business volume and what local government contracts are currently in effect.

(8) Annually, a local government that receives a grant must submit a report, on a form provided by the agency, of petroleum business volume.

(9) Annually, a rural hospital that has received a grant will report to the agency the amount of charity care provided and the dollar value of that care.

(10) At the conclusion of the fifteen-year agreement, the agency will sign a release of any claim on the real property named in the original contract between the grantee and the agency. The responsibility for removing the lien will rest with the current property owner of record.

WSR 05-19-086
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 20, 2005, 9:41 a.m., effective December 1, 2005]

Effective Date of Rule: December 1, 2005.

Purpose: Safety standards for ship repairing, shipbuilding, and shipbreaking, chapter 296-304 WAC, the Occupational Safety and Health Administration (OSHA) amended its rules related to shipyards which lines out requirements for fire protection. WISHA rules were also amended so that our rules remain at-least-as[-effective-as] the OSHA rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-304-04003; amending WAC 296-304-01001 and 296-304-01005.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 05-13-153 on June 21, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 2, Repealed 1; 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 8, Amended 2, Repealed 1.

Date Adopted: September 20, 2005.

Gary Weeks
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-304-04003 Fire prevention.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-01001 Definitions. "Alarm" - A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

"Alarm system" - A system that warns employees at the worksite of danger.

"Anchorage" - A secure point to attach lifelines, lanyards, or deceleration devices.

"Body belt" - A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

"Body harness" - Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

"Class II standpipe system" - A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

~~("Cold work")~~ "Cold work" - Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

"Contract employer" - An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services).

"Competent person" - A person who can recognize and evaluate employee exposure to hazardous substances or to other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

"Confined space" - A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

"Connector" - A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

- An independent component of the system (such as a carabiner); or
- An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

"Dangerous atmosphere" - An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

"Deceleration device" - A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy

during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

"Deceleration distance" - The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

"Designated area" - An area established for hot work after an inspection that is free of fire hazards.

"Director" - The director of the department of labor and industries or a designated representative.

"Drop test" - A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are watched for at least sixty seconds. Any drop in pressure indicates a leak.

"Emergency operations" - Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.

"Employee" - Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.

"Employer" - An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.

"Enclosed space" - A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

"Equivalent" - Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Fire hazard" - A condition or material that may start or contribute to the spread of fire.

"Fire protection" - Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

"Fire response" - The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

"Fire response employee" - A shipyard employee who carries out the duties and responsibilities of shipyard fire fighting in accordance with the fire safety plan.

"Fire response organization" - An organized group knowledgeable, trained, and skilled in shipyard fire fighting

operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

"Fire suppression" - The activities involved in controlling and extinguishing fires.

"Fire watch" - The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

"Fixed extinguishing system" - A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

"Flammable liquid" - Any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up ninety-nine percent or more of the total volume of the mixture.

"Free fall" - To fall before a personal fall arrest system begins to apply force to arrest the fall.

"Free fall distance" - The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

"Gangway" - A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gang-planks and brows.

"Hazardous substance" - A substance likely to cause injury because it is explosive, flammable, poisonous, corrosive, oxidizing, irritant, or otherwise harmful.

"Hose systems" - Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

"Host employer" - An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

(("Hot-work")) "Hot work" - Riveting, welding, burning or other fire or spark producing operations.

"Incident management system" - A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

"Incipient stage fire" - A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

"Inerting" - The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

"Interior structural fire fighting operations" - The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

"Lanyard" - A flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

"Lifeline" - A component consisting of a flexible line to connect to an anchorage at one end to hang vertically (vertical lifeline), or to connect to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Lower levels" - Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

"Multiemployer workplace" - A workplace where there is a host employer and at least one contract employer.

"Personal alert safety system (PASS)" - A device that sounds a loud signal if the wearer becomes immobilized or is motionless for thirty seconds or more.

"Personal fall arrest system" - A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

"Physical isolation" - The elimination of a fire hazard by removing the hazard from the work area (at least thirty-five feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

"Physically isolated" - Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

"Portable unfired pressure vessel" - A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 CFR Part 78, Subparts C and H.

"Positioning device system" - A body belt or body harness system rigged to allow an employee to be supported at an elevated vertical surface, such as a wall or window, and to be able to work with both hands free while leaning.

"Powder actuated fastening tool" - A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

"Protected space" - Any space into which a fixed extinguishing system can discharge.

"Proximity fire fighting" - Specialized fire fighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity fire fighting operations usually are exterior operations but may be combined with

structural fire fighting operations. Proximity fire fighting is not entry fire fighting.

"Qualified instructor" - A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

"Qualified person" - A person who has successfully demonstrated the ability to solve or resolve problems related to the subject matter and work by possessing a recognized degree or certificate of professional standing or by extensive knowledge, training, and experience.

"Related employment" - Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

"Rescue" - Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

"Restraint (tether) line" - A line from an anchorage, or between anchorages, to which the employee is secured so as to prevent the employee from walking or falling off an elevated work surface.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

"Rope grab" - A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest the fall of an employee. A rope grab usually uses the principle of inertial locking, cam/level locking or both.

"Shall" or "must" - Mandatory.

"Ship breaking" - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

"Ship building" - Construction of a vessel, including the installation of machinery and equipment.

"Ship repairing" - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

"Shipyard fire fighting" - The activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

"Small hose system" - A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

"Standpipe" - A fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

"Vessel" - Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-304-01005 ((Competent person-)) Fire protection in shipyards. ~~((1) Application. This section applies to shipyard employment.~~

~~(2) Designation:~~

~~(a) One or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011, are always carried out by a marine chemist.~~

~~Exception: The employer may designate any person who meets the applicable portions of the criteria set forth in subsection (3) of this section as a competent person who is limited to performing testing to the following situations:~~

~~(i) Repair work on small craft in boat yards where only combustible gas indicator tests are required for fuel tank leaks or when using flammable paints below decks;~~

~~(ii) Building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is required;~~

~~(iii) The breaking of vessels where there is no fuel oil or other flammable hazard; and~~

~~(iv) Tests and inspections performed to comply with WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(c).~~

~~(b) The employer shall maintain either a roster of designated competent persons or a statement that a marine chemist will perform the tests or inspections which require a competent person.~~

~~(c) The employer shall make the roster of designated persons or the statement available to employees, the employee's representative, or the director upon request.~~

~~(d) The roster shall contain, as a minimum, the following:~~

~~(i) The employer's name;~~

~~(ii) The designated competent person's name(s); and~~

~~(iii) The date the employee was trained as a competent person.~~

~~(3) Criteria. The employer shall ensure that each designated competent person has the following skills and knowledge:~~

~~(a) Ability to understand and carry out written or oral information or instructions left by marine chemist, Coast Guard authorized persons and certified industrial hygienists;~~

~~(b) Knowledge of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;~~

~~(c) Knowledge of the structure, location, and designation of spaces where work is done;~~

~~(d) Ability to calibrate and use testing equipment including but not limited to, oxygen indicators, combustible gas indicators, carbon monoxide indicators, and carbon dioxide indicators, and to interpret accurately the test results of that equipment;~~

~~(e) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in WAC 296-304-020 through 296-304-02011, WAC~~

~~296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;~~

~~(f) Ability to inspect, test, and evaluate spaces to determine the need for further testing by a marine chemist or a certified industrial hygienist; and~~

~~(g) Ability to maintain records required by this section.~~

~~(4) Recordkeeping.~~

~~(a) When tests and inspections are performed by a competent person, marine chemist, or certified industrial hygienist as required by any provisions of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, or WAC 296-304-080 through 296-304-08011, the employer shall ensure that the person performing the test and inspection records the location, time, date, location of inspected spaces, and the operations performed, as well as the test results and any instructions.~~

~~(b) The employer shall ensure that the records are posted in the immediate vicinity of the affected operations while work in the spaces is in progress. The records shall be kept on file for a period of at least three months from the completion date of the specific job for which they were generated.~~

~~(c) The employer shall ensure that the records are available for inspection by the director, and employees and their representatives.)~~ **(1) Purpose.** The purpose of this section is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

(2) Scope. This section covers employers with employees engaged in shipyard employment aboard vessels and vessel sections, and on land-side operations regardless of geographic location.

(3) Employee participation. The employer must provide ways for employees or employee representatives, or both to participate in developing and periodically reviewing programs and policies adopted to comply with this section.

(4) Multiemployer worksites.

(a) Host employer responsibilities. The host employer's responsibilities are to:

(i) Inform all employers at the worksite about the content of the fire safety plan including hazards, controls, fire safety and health rules, and emergency procedures;

(ii) Make sure the safety and health responsibilities for fire protection are assigned as appropriate to other employers at the worksite; and

(iii) If there is more than one host employer, each host employer must communicate relevant information about fire-related hazards to other host employers. When a vessel owner or operator (temporarily) becomes a host shipyard employer by directing the work of ships' crews on repair or modification of the vessel or by hiring other contractors directly, the vessel owner or operator must also comply with these provisions for host employers.

(b) Contract employer responsibilities. The contract employer's responsibilities are to:

(i) Make sure that the host employer knows about the fire-related hazards associated with the contract employer's work and what the contract employer is doing to address them; and

(ii) Advise the host employer of any previously unidentified fire-related hazards that the contract employer identifies at the worksite.

NEW SECTION

WAC 296-304-01007 Fire safety plan. (1) **Employer responsibilities.** The employer must develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire. (See Appendix A to this section for a model fire safety plan.)

(2) **Plan elements.** The employer must include the following information in the fire safety plan:

- (a) Identification of the significant fire hazards;
- (b) Procedures for recognizing and reporting unsafe conditions;
- (c) Alarm procedures;
- (d) Procedures for notifying employees of a fire emergency;
- (e) Procedures for notifying fire response organizations of a fire emergency;
- (f) Procedures for evacuation;
- (g) Procedures to account for all employees after an evacuation; and
- (h) Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(3) **Reviewing the plan with employees.** The employer must review the plan with each employee at the following times:

- (a) By March 1, 2006, for employees who are currently working;
- (b) Upon initial assignment for new employees; and
- (c) When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(4) **Additional employer requirements.** The employer also must:

- (a) Keep the plan accessible to employees, employee representatives, and WISHA;
- (b) Review and update the plan whenever necessary, but at least annually;
- (c) Document that affected employees have been informed about the plan as required by this subsection; and
- (d) Ensure any outside fire response organization that the employer expects to respond to fires at the employer's worksite has been given a copy of the current plan.

(5) **Contract employers.** Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

NEW SECTION

WAC 296-304-01009 Precautions for hot work. (1) **General requirements.**

(a) **Designated areas.** The employer may designate areas for hot work in sites such as vessels, vessel sections, fabricating shops, and subassembly areas that are free of fire hazards.

(b) **Nondesignated areas.**

(i) Before authorizing hot work in a nondesignated area, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to ensure the area is free of fire hazards, unless a marine chemist's certificate or shipyard competent person's log is used for authorization.

(ii) The employer shall authorize employees to perform hot work only in areas that are free of fire hazards, or that have been controlled by physical isolation, fire watches, or other positive means.

Note: The requirements of (b) of this subsection apply to all hot work operations in shipyard employment except those covered by WAC 296-304-02007.

(2) **Specific requirements.**

(a) **Maintaining fire hazard-free conditions.** The employer must keep all hot work areas free of new hazards that may cause or contribute to the spread of fire. Unexpected energizing and energy release are covered by WAC 296-304-120. Exposure to toxic and hazardous substances is covered in chapter 296-841 WAC, Respiratory hazards; chapter 296-802 WAC, Employee medical and exposure records; and WAC 296-800-170, Employer chemical hazard communication—Introduction.

(b) **Fuel gas and oxygen supply lines and torches.** The employer must make sure that:

- (i) No unattended fuel gas and oxygen hose lines or torches are in confined spaces;
- (ii) No unattended charged fuel gas and oxygen hose lines or torches are in enclosed spaces for more than fifteen minutes;
- (iii) All fuel gas and oxygen hose lines are disconnected at the supply manifold at the end of each shift; and
- (iv) All disconnected fuel gas and oxygen hose lines are rolled back to the supply manifold or to open air to disconnect the torch; or extended fuel gas and oxygen hose lines are not reconnected at the supply manifold unless the lines are given a positive means of identification when they were first connected and the lines are tested using a drop test or other positive means to ensure the integrity of fuel gas and oxygen burning system.

NEW SECTION

WAC 296-304-01011 Fire watches. (1) **Written fire watch policy.** The employer must create and keep current a written policy that specifies the following requirements for employees performing fire watch in the workplace:

- (a) The training employees must be given (WAC 296-304-01019(3) contains detailed fire watch training requirements);
- (b) The duties employees are to perform;
- (c) The equipment employees must be given; and
- (d) The personal protective equipment (PPE) that must be made available and worn as required by WAC 296-304-090.

(2) **Posting fire watches.** The employer must post a fire watch if during hot work any of the following conditions are present:

- (a) Slag, weld splatter, or sparks might pass through an opening and cause a fire;

(b) Fire-resistant guards or curtains are not used to prevent ignition of combustible materials on or near decks, bulkheads, partitions, or overheads;

(c) Combustible material closer than thirty-five feet (10.7 m) to the hot work in either the horizontal or vertical direction cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains;

(d) The hot work is carried out on or near insulation, combustible coatings, or sandwich-type construction that cannot be shielded, cut back, or removed, or in a space within a sandwich-type construction that cannot be inerted;

(e) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or sandwich-type construction may be ignited by conduction or radiation;

(f) The hot work is close enough to cause ignition through heat radiation or conduction on the following:

(i) Insulated pipes, bulkheads, decks, partitions, or overheads; or

(ii) Combustible materials and/or coatings;

(g) The work is close enough to unprotected combustible pipe or cable runs to cause ignition; or

(h) A marine chemist, a Coast Guard-authorized person, or a shipyard competent person, as defined in WAC 296-304-020, requires that a fire watch be posted.

(3) Assigning employees to fire watch duty.

(a) The employer must not assign other duties to a fire watch while the hot work is in progress.

(b) Employers must ensure that employees assigned to fire watch duty:

(i) Have a clear view of and immediate access to all areas included in the fire watch;

(ii) Are able to communicate with workers exposed to hot work;

(iii) Are authorized to stop work if necessary and restore safe conditions within the hot work area;

(iv) Remain in the hot work area for at least thirty minutes after completion of the hot work, unless the employer or its representative surveys the exposed area and makes a determination that there is no further fire hazard;

(v) Are trained to detect fires that occur in areas exposed to the hot work;

(vi) Attempt to extinguish any incipient stage fires in the hot work area that are within the capability of available equipment and within the fire watch's training qualifications, as defined in WAC 296-304-01019;

(vii) Alert employees of any fire beyond the incipient stage; and

(viii) If unable to extinguish fire in the areas exposed to the hot work, activate the alarm.

(c) The employer must ensure that employees assigned to fire watch are physically capable of performing these duties.

NEW SECTION

WAC 296-304-01013 Fire response. (1) **Employer responsibilities.** The employer must:

(a) Decide what type of response will be provided and who will provide it; and

(b) Create, maintain, and update a written policy that:

(i) Describes the internal and outside fire response organizations that the employer will use; and

(ii) Defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

(2) Required written policy information.

(a) **Internal fire response.** If an internal fire response is to be used, the employer must include the following information in the employer's written policy:

(i) The basic structure of the fire response organization;

(ii) The number of trained fire response employees;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedures for using protective clothing and equipment.

(b) **Outside fire response.** If an outside fire response organization is used, the employer must include the following information in the written policy:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations; and

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from the outside fire response organization;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(c) **A combination of internal and outside fire response.** If a combination of internal and outside fire response is to be used, the employer must include the following information, in addition to the requirements in (a) and (b) of this subsection, in the written policy:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by

written standard operating procedures for each particular type of fire response at the worksite; and

(v) The type, amount, and frequency of joint training with outside fire response organizations if given to fire response employees.

(d) **Employee evacuation.** The employer must include the following information in the employer's written policy:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(e) **Rescue and emergency response.** The employer must include the following information in the employer's written policy:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(3) **Medical requirements for shipyard fire response employees.** The employer must ensure that:

(a) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(b) Fire response employees, who are required to wear respirators in performing their duties, meet the medical requirements of WAC 296-304-09007;

(c) Each fire response employee has an annual medical examination; and

(d) The medical records of fire response employees are kept in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(4) **Organization of internal fire response functions.** The employer must:

(a) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(b) Establish lines of authority and assign responsibilities to ensure that the components of the internal fire response are accomplished;

(c) Set up an incident management system to coordinate and direct fire response functions, including:

(i) Specific fire emergency responsibilities;

(ii) Accountability for all fire response employees participating in an emergency operation; and

(iii) Resources offered by outside organizations; and

(d) Provide the information required in this subsection to the outside fire response organization to be used.

(5) **Personal protective clothing and equipment for fire response employees.**

(a) **General requirements.** The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Ensure that fire response employees wear the appropriate personal protective clothing and use the equipment, when necessary, to protect them from hazardous exposures.

(b) **Thermal stability and flame resistance.** The employer must:

(i) Ensure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown that:

(A) The fabric will withstand the flammability hazard that may be encountered; or

(B) The clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(c) **Respiratory protection.** The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown;

(ii) Provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known hazardous chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to hazardous chemicals in liquid form either:

(A) SCBA; or

(B) Respiratory protective devices certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR Part 84 as suitable for the specific chemical environment;

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR Part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981-1997 Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service (incorporated by reference, see WAC 296-304-01003); and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with chapter 296-842 WAC, Respiratory protection.

(d) **Interior structural firefighting operations.** The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a helmet, gloves, footwear, and protective hoods, and either a protective coat and trousers or a protective coverall; and

(ii) Ensure that this equipment meets the applicable recommendations in NFPA 1971-2000 Standard on Protective Ensemble for Structural Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(e) **Proximity fire fighting operations.** The employer must provide, at no cost, to all fire response employees who are exposed to the hazards of proximity fire fighting, appropriate protective proximity clothing that meets the applicable recommendations in NFPA 1976-2000 Standard on Protective Ensemble for Proximity Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(f) **Personal alert safety system (PASS) devices.** The employer must:

(i) Provide each fire response employee involved in fire fighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the recommendations in NFPA 1982-1998 Standard on Personal Alert Safety Systems (PASS) (incorporated by reference, see WAC 296-304-01003).

(g) **Life safety ropes, body harnesses, and hardware.** The employer must ensure that:

(i) All life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable recommendations in NFPA 1983-2001, Standard on Fire Service Life Safety Rope and System Components (incorporated by reference, see WAC 296-304-01003);

(ii) Fire response employees use only Class I body harnesses to attach to ladders and aerial devices; and

(iii) Fire response employees use only Class II and Class III body harnesses for fall arrest and rappelling operations.

(6) Equipment maintenance.

(a) **Personal protective equipment.** The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(b) **Fire response equipment.** The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or vessel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire response equipment within a facility or vessel or vessel section.

NEW SECTION

WAC 296-304-01015 Hazards of fixed extinguishing systems on board vessels and vessel sections. (1) Employer responsibilities. The employer must comply with the provisions of this section whenever employees are exposed to fixed extinguishing systems that could create a dangerous atmosphere when activated in vessels and vessel sections, regardless of geographic location.

(2) Requirements for automatic and manual systems. Before any work is done in a space equipped with fixed extinguishing systems, the employer must either:

(a) Physically isolate the systems or use other positive means to prevent the systems' discharge; or

(b) Ensure employees are trained to recognize:

(i) Systems' discharge and evacuation alarms and the appropriate escape routes; and

(ii) Hazards associated with the extinguishing systems and agents including the dangers of disturbing system components and equipment such as piping, cables, linkages, detection devices, activation devices, and alarm devices.

(3) **Sea and dock trials.** During trials, the employer must ensure that all systems shall remain operational.

(4) **Doors and hatches.** The employer must:

(a) Take protective measures to ensure that all doors, hatches, scuttles, and other exit openings remain working and accessible for escape in the event the systems are activated; and

(b) Ensure that all inward opening doors, hatches, scuttles, and other potential barriers to safe exit are removed, locked open, braced, or otherwise secured so that they remain open and accessible for escape if the systems' activation could result in a positive pressure in the protected spaces sufficient to impede escape.

(5) **Testing the system.**

(a) When testing a fixed extinguishing system involves a total discharge of extinguishing medium into a space, the employer must evacuate all employees from the space and assure that no employees remain in the space during the discharge. The employer must retest the atmosphere in accordance with WAC 296-304-02003 to ensure that the oxygen levels are safe for employees to enter.

(b) When testing a fixed extinguishing system does not involve a total discharge of the system's extinguishing medium, the employer must make sure that the system's extinguishing medium is physically isolated and that all employees not directly involved in the testing are evacuated from the protected space.

(6) **Conducting system maintenance.** Before conducting maintenance on a fixed extinguishing system, the employer must ensure that the system is physically isolated.

(7) **Using fixed manual extinguishing systems for fire protection.** If fixed manual extinguishing systems are used to provide fire protection for spaces in which the employees are working, the employer must ensure that:

(a) Only authorized employees are allowed to activate the system;

(b) Authorized employees are trained to operate and activate the systems; and

(c) All employees are evacuated from the protected spaces, and accounted for, before the fixed manual extinguishing system is activated.

NEW SECTION

WAC 296-304-01017 Land-side fire protection systems. (1) Employer responsibilities. The employer must ensure all fixed and portable fire protection systems needed to meet WISHA standards for employee safety or employee protection from fire hazards in land-side facilities, including, but not limited to, buildings, structures, and equipment, meet the requirements of this section.

(2) Portable fire extinguishers and hose systems.

(a) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10-1998 Standard for Portable Fire Extinguishers (incorporated by reference, see WAC 296-304-01003).

(b) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10-1998, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific

recommendations in NFPA 14-2000 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003).

(3) **General requirements for fixed extinguishing systems.** The employer must:

(a) Ensure that any fixed extinguishing system component or extinguishing agent is approved by an OSHA nationally recognized testing laboratory for use on the specific hazards the employer expects it to control or extinguish;

(b) Notify employees and take the necessary precautions to ensure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(c) Ensure all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(d) Provide and ensure employees use proper personal protective equipment when entering discharge areas in which the atmosphere remains hazardous to employee safety or health, or provide safeguards to prevent employees from entering those areas. See WAC 296-304-02003 for additional requirements applicable to safe entry into spaces containing dangerous atmospheres;

(e) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(f) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72-1999 National Fire Alarm Code (incorporated by reference, see WAC 296-304-01003).

(4) **Fixed extinguishing systems.** The employer must select, install, maintain, inspect, and test all fixed systems required by WISHA as follows:

(a) Standpipe and hose systems according to NFPA 14-2000 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003);

(b) Automatic sprinkler systems according to NFPA 25-2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, and either NFPA 13-1999 Standard for the Installation of Sprinkler Systems or NFPA 750-2000 Standard on Water Mist Fire Protection Systems (incorporated by reference, see WAC 296-304-01003);

(c) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15-2001 Standard for Water Spray Fixed Systems for Fire Protection; NFPA 11-1998 Standard for Low-Expansion Foam; and NFPA 11A-1999 Standard for Medium- and High-Expansion Foam Systems (incorporated by reference, see WAC 296-304-01003);

(d) Fixed extinguishing systems using dry chemical as the extinguishing agent according to NFPA 17-2002 Standard for Dry Chemical Extinguishing Systems (incorporated by reference, see WAC 296-304-01003); and

(e) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12-2000 Standard on Carbon Dioxide Extinguishing Systems; NFPA 12A-1997 Standard on Halon 1301 Fire Extinguishing Systems; and NFPA 2001-2000 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see WAC 296-304-01003).

NEW SECTION

WAC 296-304-01019 Training. (1) The employer must train employees in the applicable requirements of this section:

(a) By March 1, 2006, for employees currently working;

(b) Upon initial assignment for new employees; and

(c) When necessary to maintain proficiency for employees previously trained.

(2) **Employee training.** The employer must ensure that all employees are trained on:

(a) The emergency alarm signals, including system discharge alarms and employee evacuation alarms; and

(b) The primary and secondary evacuation routes that employees must use in the event of a fire in the workplace. While all vessels and vessel sections must have a primary evacuation route, a secondary evacuation route is not required when impracticable.

(3) **Additional training requirements for employees expected to fight incipient stage fires.** The employer must ensure that employees expected to fight incipient stage fires are trained on the following:

(a) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient fire fighting, and the procedures used to reduce these hazards;

(b) The hazards associated with fixed and portable fire protection systems that employees may use or to which they may be exposed during discharge of those systems; and

(c) The activation and operation of fixed and portable fire protection systems that the employer expects employees to use in the workplace.

(4) **Additional training requirements for shipyard employees designated for fire response.** The employer must:

(a) Have a written training policy stating that fire response employees must be trained and capable of carrying out their duties and responsibilities at all times;

(b) Keep written standard operating procedures that address anticipated emergency operations and update these procedures as necessary;

(c) Review fire response employee training programs and hands-on sessions before they are used in fire response training to make sure that fire response employees are protected from hazards associated with fire response training;

(d) Provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures;

(e) Train new fire response employees before they engage in emergency operations;

(f) At least quarterly, provide training on the written operating procedures to fire response employees who are expected to fight fires;

(g) Use qualified instructors to conduct the training;

(h) Conduct any training that involves live fire response exercises in accordance with NFPA 1403-2002 Standard on Live Fire Training Evolutions (incorporated by reference, see WAC 296-304-01003);

(i) Conduct semiannual drills according to the employer's written procedures for fire response employees

that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and fire-related hazards; and

(j) Prohibit the use of smoke generating devices that create a dangerous atmosphere in training exercises.

(5) Additional training requirements for fire watch duty.

(a) The employer must ensure that each fire watch is trained by an instructor with adequate fire watch knowledge and experience to cover the items as follows:

(i) Before being assigned to fire watch duty;

(ii) Whenever there is a change in operations that presents a new or different hazard;

(iii) Whenever the employer has reason to believe that the fire watch's knowledge, skills, or understanding of the training previously provided is inadequate; and

(iv) Annually.

(b) The employer must ensure that each employee who stands fire watch duty is trained in:

(i) The basics of fire behavior, the different classes of fire and of extinguishing agents, the stages of fire, and methods for extinguishing fires;

(ii) Extinguishing live fire scenarios whenever allowed by local and federal law;

(iii) The recognition of the adverse health effects that may be caused by exposure to fire;

(iv) The physical characteristics of the hot work area;

(v) The hazards associated with fire watch duties;

(vi) The personal protective equipment (PPE) needed to perform fire watch duties safely;

(vii) The use of PPE;

(viii) The selection and use of any fire extinguishers and fire hoses likely to be used by a fire watch in the work area;

(ix) The location and use of barriers;

(x) The means of communication designated by the employer for fire watches;

(xi) When and how to start fire alarm procedures; and

(xii) The employer's evacuation plan.

(c) The employer must ensure that each fire watch is trained to alert others to exit the space whenever:

(i) The fire watch perceives an unsafe condition;

(ii) The fire watch perceives that a worker performing hot work is in danger;

(iii) The employer or a representative of the employer orders an evacuation; or

(iv) An evacuation signal, such as an alarm, is activated.

(6) Records. The employer must keep records that demonstrate that employees have been trained as required by subsections (1) through (5) of this section.

(a) The employer must ensure that the records include the employee's name; the trainer's name; the type of training; and the date(s) on which the training took place.

(b) The employer must keep each training record for one year from the time it was made or until it is replaced with a new training record, whichever is shorter, and make it available for inspection and copying by WISHA on request.

NEW SECTION

WAC 296-304-01021 Competent person. (1) **Applica-**
tion. This section applies to shipyard employment.

(2) Designation.

(a) One or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011, are always carried out by a marine chemist.

Exception:

The employer may designate any person who meets the applicable portions of the criteria set forth in subsection (3) of this section as a competent person who is limited to performing testing to the following situations:

(i) Repair work on small craft in boat yards where only combustible gas indicator tests are required for fuel tank leaks or when using flammable paints below decks;

(ii) Building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is required;

(iii) The breaking of vessels where there is no fuel oil or other flammable hazard; and

(iv) Tests and inspections performed to comply with WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(e).

(b) The employer shall maintain either a roster of designated competent persons or a statement that a marine chemist will perform the tests or inspections which require a competent person.

(c) The employer shall make the roster of designated persons or the statement available to employees, the employee's representative, or the director upon request.

(d) The roster shall contain, as a minimum, the following:

(i) The employer's name;

(ii) The designated competent person's name(s); and

(iii) The date the employee was trained as a competent person.

(3) Criteria. The employer shall ensure that each designated competent person has the following skills and knowledge:

(a) Ability to understand and carry out written or oral information or instructions left by marine chemists, Coast Guard-authorized persons and certified industrial hygienists;

(b) Knowledge of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(c) Knowledge of the structure, location, and designation of spaces where work is done;

(d) Ability to calibrate and use testing equipment including, but not limited to, oxygen indicators, combustible gas indicators, carbon monoxide indicators, and carbon dioxide indicators, and to interpret accurately the test results of that equipment;

(e) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(f) Ability to inspect, test, and evaluate spaces to determine the need for further testing by a marine chemist or a certified industrial hygienist; and

(g) Ability to maintain records required by this section.

(4) **Recordkeeping.**

(a) When tests and inspections are performed by a competent person, marine chemist, or certified industrial hygienist as required by any provisions of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, or WAC 296-304-080 through 296-304-08011, the employer shall ensure that the person performing the test and inspection records the location, time, date, location of inspected spaces, and the operations performed, as well as the test results and any instructions.

(b) The employer shall ensure that the records are posted in the immediate vicinity of the affected operations while work in the spaces is in progress. The records shall be kept on file for a period of at least three months from the completion date of the specific job for which they were generated.

(c) The employer shall ensure that the records are available for inspection by the director, and employees and their representatives.

WSR 05-19-091

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed September 20, 2005, 1:18 p.m., effective October 21, 2005]

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

Purpose: Chapter 456-09 WAC sets forth the rules of practice and procedure before the Board of Tax Appeals. The chapter was extensively revised under WSR 05-13-141. Under those revisions, two [three] sections of the chapter that are superseded by new sections were not repealed. The purpose of this rule making is to repeal those two [three] sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 456-09-150, 456-09-360, and 456-09-630.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 05-15-123 on July 18, 2005.

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 3.

Date Adopted: September 20, 2005.

Anne Solwick
Executive Director

WSR 05-19-103

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:49 p.m., effective October 21, 2005]

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

Purpose: WAC 180-85-034, to adopt a new section of WAC that addresses the manner in which educators may use continuing education credit hours (clock hours) earned through a professional growth plan to maintain the continuing certificate or renew the professional certificate.

Citation of Existing Rules Affected by this Order: New section WAC 180-85-034.

Statutory Authority for Adoption: RCW 28A.410.010.

Adopted under notice filed as WSR 05-08-044 on March 30, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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 26, 2005.

Larry Davis
Executive Director

NEW SECTION

WAC 180-85-034 Continuing education credit hour—Definition—Professional development system—Professional growth plan. (1) Beginning September 1, 2005, in order to initiate a process that leads to a performance-based continuing education system, districts and approved private schools may offer educators the opportunity through use of a professional growth plan to earn not more than sixty continuing education credit hours over a period of two school years, in addition to hours earned through WAC 180-85-025 (1) through (4). Districts/private schools electing to participate must verify as a prerequisite that the following minimum elements of a professional development system are in place:

(a) A professional development system plan describing the use of professional growth plans for continuing education

purposes and the accompanying support structure which will be made available to participants shall:

(i) Be approved by the board of directors of the local school district or approved private school.

(ii) In the case of a public school district, be accompanied by a letter of support from the applicable local educational association.

(iii) Include the establishment of a professional development committee consisting of, at a minimum, an educator and administrator representing the building level and a representative of the district or approved private school. This professional development committee is formed to review and approve professional growth plans, and verify continuing education credit hours to be awarded.

(b) A template of an individual professional growth plan, showing how the process described in subsection (3) of this section will be documented, as well as how the plan is tailored to the individual's professional growth needs and aligned with district improvement plans, school improvement plans under WAC 180-16-220, or both.

(2) The district/private school professional development system must be approved by the superintendent of public instruction. Districts shall respond to requests for information from the superintendent of public instruction, for evaluation purposes.

(3) The office of superintendent of public instruction shall publish guidelines on its website as part of the state professional development planning guide to assist districts/private schools with compliance and implementation. Such guidelines shall include the following minimum essential elements:

(a) An assessment of the needs of each participating educator, including a written reflective analysis.

(b) Preparation of a written individual professional growth plan, with input from the educator's supervisor, that is approved by the professional development committee.

(c) Activities to both implement the plan and gather evidence of its completion.

(d) Verification of completion, including review of evidence and determination, in the professional judgment of the professional development committee, of how many continuing education credit hours are to be awarded.

(4) In making its determination, the professional development committee shall not count continuing education credit hours that can be awarded pursuant to WAC 180-85-025 (1) through (4).

(a) If documentation/evidence presented is determined to be incomplete or insufficient, the professional development committee shall provide feedback to the educator on the documentation/evidence presented, citing reasons for the decision.

(b) An educator may submit for review by the professional development committee additional documentation and evidence submitted in response to feedback received under (a) of this subsection.

(5) Individuals electing to use professional growth planning for purposes of earning continuing education credit hours may choose to integrate such professional growth planning with that called for in the professional growth option for

evaluation established in accordance with RCW 28A.405.-100(5), but they may not be required to do so.

(6) After the first three years of implementation, the superintendent of public instruction will review this option and will provide a report with recommendations, as necessary, to the professional educator standards board.

WSR 05-19-104

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:50 p.m., effective October 21, 2005]

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

Purpose: The purpose of the amendments to these rules is to provide technical editing to clarify the manner in which continuing education credit hours (clock hours) can be used for certification purposes.

Citation of Existing Rules Affected by this Order: Amending WAC 180-85-025, 180-85-033, and 180-85-075.

Statutory Authority for Adoption: RCW 28A.410.010.

Adopted under notice filed as WSR 05-08-047, 05-08-046, and 05-08-045 on March 30, 2005.

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

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

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

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

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

Date Adopted: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 04-20-094, filed 10/5/04, effective 11/5/04)

WAC 180-85-025 Continuing education—Definition. As used in this chapter, the term "continuing education" shall mean:

(1) All college and/or university credit, normally 100 level or higher, awarded by a regionally accredited institution of higher education, pursuant to WAC (~~180-78-010~~) 180-78A-010(6).

(2) All continuing education credit hours awarded by a vocational-technical college pursuant to WAC 180-85-030(3) and all continuing education credit hours awarded in conformance with the in-service education procedures and standards specified in this chapter by an approved in-service education agency.

(3) All continuing education credit hours awarded through a business, industry, or government internship that meets the requirements of chapter 180-83 WAC, Internships.

(4) All continuing education credit hours awarded in conformance with WAC 180-85-033 and 180-85-034.

AMENDATORY SECTION (Amending WSR 04-20-094, filed 10/5/04, effective 11/5/04)

WAC 180-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors. (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 180-78A-010 and 180-78A-505, members of a professional growth team, excluding the candidate, shall receive the equivalent of ten continuing education credit hours. The team member may not receive more than the equivalent of twenty continuing education credit hours, as defined by this section, during a calendar year period.

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

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

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

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

(5) Notwithstanding any provisions of this chapter to the contrary, for designing and completing a professional growth plan under the provisions of WAC 180-85-034, participants

shall receive the equivalent of no more than sixty continuing education credit hours over a period of two school years, as defined by this chapter.

AMENDATORY SECTION (Amending WSR 02-14-112, filed 7/2/02, effective 8/2/02)

WAC 180-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing (~~or a standard~~) certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 180-85-025 and 180-85-030, prior to (~~his or her first~~) the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 180-85-100.

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

WSR 05-19-105

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:51 p.m., effective October 21, 2005]

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

Purpose: These are technical edits to this section of the WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-050.

Statutory Authority for Adoption: Chapter 28A.230 RCW.

Adopted under notice filed as WSR 05-15-055 on July 12, 2005.

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: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 04-20-093, filed 10/5/04, effective 11/5/04)

WAC 180-51-050 High school credit—Definition. As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve or the equivalent of a four-year high school program, and grades seven and eight under the provisions of RCW 28A.230.090 (4) and (5):

(a) One hundred fifty hours of planned instructional activities approved by the district; or

(b) Satisfactory demonstration by a student of clearly identified competencies established pursuant to a process defined in written district policy. Districts are strongly advised to confirm with the higher education coordinating board that the award of competency-based high school credit meets the minimum college core admissions standards set by the higher education coordinating board for admission into a public, baccalaureate institution.

(2) College and university course work. At the college or university level, five quarter or three semester hours shall equal 1.0 high school credit. Provided, That for the purpose of this subsection, "college and university course work" means course work that generally is designated 100 level or above by the college or university.

(3) Community/technical college high school completion program - Diploma awarded by community/technical colleges. Five quarter or three semester hours of community/technical college high school completion course work shall equal 1.0 high school credit. Provided, That for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(4) Community/technical college high school completion program - Diploma awarded by school district. A minimum of .5 and a maximum of 1.0 high school credit may be awarded for every five quarter or three semester hours of community/technical college high school completion course work: Provided, That for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(5) Each high school district board of directors shall adopt a written policy for determining the awarding of equivalency credit authorized under subsection (4) of this section. The policy shall apply uniformly to all high schools in the district.

(6) Each high school district board of directors shall adopt a written policy regarding the recognition and acceptance of earned credits. The policy shall apply to all high schools in the district. The policy may include reliance on the professional judgment of the building principal or designee in determining whether or not a credit meets the district's standards for recognition and acceptance of a credit. The policy shall include an appeal procedure to the district if it includes

reliance on the professional judgment of the building principal or designee.

(7) A student must first obtain a written release from their school district to enroll in a high school completion program under subsection (3) of this section if the student has not reached age eighteen or whose class has not graduated.

(8) The state board of education shall notify the state board for community and technical colleges and the higher education coordinating board of any school or school district that awards high school credit as authorized under subsection (1)(b) of this section.

WSR 05-19-106

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:52 p.m., effective October 21, 2005]

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

Purpose: This change replaces "not take" with "no score" on the transcript when the WASL is not taken by the student.

Citation of Existing Rules Affected by this Order: Amending WAC 180-57-070.

Statutory Authority for Adoption: RCW 28A.305.220.

Adopted under notice filed as WSR 05-15-056 on July 12, 2005.

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: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 04-22-059, filed 10/29/04, effective 11/29/04)

WAC 180-57-070 Mandatory high school transcript contents—Items—Timelines. (1)(a) The standardized high school transcript shall contain only the information listed in subsection (2) of this section in order to meet the statutory requirements under RCW 28A.305.220 for a statewide standardized transcript.

(b) Any other information the district or school may desire to include may be stapled to the transcript or otherwise provided with the transcript. Information that is not listed

below shall not be included on the state standardized transcript:

(2)(a) Authorized and required transcript information effective now:

(i) The student's legal name (last name, first name, and middle name(s) or middle initial(s)), and other or former names used;

(ii) The name(s) of parent(s) or guardian(s);

(iii) The student's birthdate (mm/dd/yyyy);

(iv) The student's school district identification number (if applicable);

(v) The school name, address, phone number, and name of the school district issuing the transcript;

(vi) A list of previous schools attended where credit was attempted (school name, city, state, and month and year of entrance and exit);

(vii) The student's academic history for all high school level courses attempted, including courses taken under RCW 28A.230.090(4) and including those courses where a student has withdrawn, and listed by report period for the grade level (month and year), course code and description, marks/grades earned as defined in WAC 180-57-050 (a mark/grade of "W" will be used to indicate a withdrawal from a course), credits attempted and earned as defined in WAC 180-57-040, grade point average as defined in WAC 180-57-055, and a report period and cumulative summary of the student's high school level academic history.

(viii) Credits attempted for courses taken more than once to improve a grade/mark may count only once toward the number of credits required for graduation, except that credits attempted for courses taken more than once to improve a grade may count toward the number of credits required for graduation on the condition that the letter grades earned for all attempts are included in the calculation of the student's grade point average. For the purpose of this subsection, districts and schools shall not convert letter grades to grades/marks not used in the grade point average calculation.

(b) Authorized and required additional transcript information effective beginning with the graduating class of 2006:

(i) The following courses, for which college credit can be earned, shall be designated on the transcript with the designation coding indicated. Courses completed and credits earned through running start shall be noted with an "R" designation. Courses completed and credits earned through advanced placement shall be noted with an "A" designation. Courses completed and credits earned through college in the high school shall be noted with a "C" designation. Courses completed and credits earned through an international baccalaureate program shall be noted with an "I" designation. Courses completed which earn college credit through techprep and/or the corresponding credits or certification earned shall be noted with a "T" designation. Courses that meet or satisfy higher education coordinating board core course requirements shall be noted with a "B" designation. Courses completed and credits earned through an honors option shall be noted with an "H" designation;

(ii)(A) Notation of the student's actual highest scale score and level achieved for each content area on the Washington assessment of student learning (noting month and year);

(B) Notation ~~((that))~~ of "no score" if the Washington assessment of student learning was not taken ~~((if the Washington assessment of student learning was not taken))~~;

(C) Notation of the student's actual highest level achieved on the Washington alternate assessment system (WAAS) that has been taken by a student eligible to take the WAAS (noting month and year);

(c) Authorized and required additional transcript information effective beginning with the graduating class of 2008:

(i) Notation that the high school and beyond plan graduation requirement was met (noting month and year) or not met by the student;

(ii) Notation that the culminating project graduation requirement was met (noting month and year) or not met by the student; and

(iii) Notation that the certificate of academic achievement graduation requirement was met (noting month and year) or not met by the student in one of the following ways:

(A) Based on the student's actual highest scale score and level achieved for each content area of the Washington assessment of student learning.

A "scholar designation" shall be noted on the transcript when a student achieves level four on each content area on the Washington assessment of student learning on the first attempt at taking each content area assessment.

(B) Based in whole or in part on the student's results on an alternative assessment approved by the legislature under section 101(7), chapter 19, Laws of 2004, including the student's actual highest earned performance rating on the alternate assessment (noting month and year);

(C) Notation that the certificate of individual achievement graduation requirement was met (noting month and year) or not met by the student based on the student's results on an assessment of the objectives in the student's individual education plan using the Washington alternate assessment system (WAAS).

(3) Each issuance of the transcript shall include a report date (mm/dd/yyyy), graduation date (noting month and year), end of transcript record (signifying no more authorized data), office of superintendent of public instruction (OSPI) transcript form version number, and page number ('x' of 'y').

(4) The signature of the authorized school official (name, title, and date) and seal of the district, if available. The signature of the authorized school official may be affixed electronically, subject to a written district policy that addresses signature security and assures that the authorized school official acknowledges, in writing, that affixing their signature electronically to the transcript is a legal and binding action.

WSR 05-19-107

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:54 p.m., effective October 21, 2005]

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

Purpose: Chapter 180-20 WAC, School bus driver qualifications, changes consist of restructuring of current language to create a logical flow. The time period for disqualifying offenses has been modified to alignment with standards

for school district certificated personnel. The authorization process has been modified to align with the current school bus driver online authorization process.

Citation of Existing Rules Affected by this Order: Amending chapter 180-20 WAC.

Statutory Authority for Adoption: RCW 28A.160.210.

Adopted under notice filed as WSR 05-15-057 on August 26 [July 12], 2005.

Changes Other than Editing from Proposed to Adopted Version: The intent of the change in WAC 180-20-103, which is substantially different from what was filed, is for school bus drivers to have the same consequences as certificated school staff. The language was inadvertently not filed with the code reviser at the time of the CR-102 filing.

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 3, Amended 7, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 7, 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 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 04-08-055, filed 4/2/04, effective 5/3/04)

WAC 180-20-009 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus driver" means a person, who is employed by a school district including contracted drivers under WAC 180-20-031 (1) and (2) and as part of that employment or contract, operates a school bus as defined in WAC 392-143-010, ~~((as well as))~~ or other motor vehicles for the regularly scheduled transportation of students between home and school ~~((and for school related activities on routinely scheduled routes))~~. School buses shall be operated by authorized school bus drivers when transporting students. An authorized school bus driver may also transport students on field trips and other school related activities.

(2) "A school bus driver's authorization" means an authorization issued by the superintendent of public instruction indicating that the person has met state board of education requirements to operate a school bus or other motor vehicle for the purpose of transporting students to and from school routinely on scheduled routes and/or school activities. A school bus driver must be authorized prior to transporting students and such authorization shall continue in effect as long as the person continues to meet the requirements of this

chapter. A school bus driver authorization is not valid if suspended, revoked or lapsed.

(3) "School bus driver instructor's authorization" means an authorization issued by the superintendent of public instruction to a person successfully completing the superintendent of public instruction approved school bus driver instructor course. This authorization qualifies a person to train and verify the training of school bus drivers. This authorization shall lapse unless the holder successfully completes an annual school bus driver instructor's in-service course.

(4) "School bus driver training course" means a course established by the superintendent of public instruction and taught by an authorized school bus driver instructor. This course shall be successfully completed by all applicants for a ~~((continuing))~~ school bus driver's authorization.

(5) "School bus driver annual in-service training course" means an annual course taught by an authorized school bus driver instructor. The content and minimum time requirements of such course shall be annually determined by the superintendent of public instruction and shall be required to be completed ~~((by the end of the school year))~~ no earlier than August 1st and no later than November 1st by all authorized school bus drivers.

(6) "School bus driver instructor's course" means a training program authorized by the superintendent of public instruction to qualify a person as a school bus driver instructor.

(7) "School bus driver instructor's annual in-service course" means an annual required course, the content of which shall be determined by the superintendent of public instruction. Successful completion of this course prevents the instructor's authorization from lapsing.

(8) "Serious behavioral problem" includes, but is not limited to, conduct which indicates unfitness to carry out the responsibilities related to the occupation or job performance of transporting children, such as: Dishonesty; immorality; or misuse of alcohol, a controlled substance, or a prescription drug; or furnishing alcohol or controlled substances to a minor or student. It does not include the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(9) "Medical examiner's certificate" means a written verification of passing a medical examination in accordance with the standards established in 49 CFR 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. School bus drivers must provide verification of passing a medical examination at a minimum of every twenty-four months. School bus drivers must continue to meet these medical requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.

AMENDATORY SECTION (Amending WSR 04-08-055, filed 4/2/04, effective 5/3/04)

WAC 180-20-021 Training and qualifications of school bus driver instructors—Administration. It shall be the responsibility of the superintendent of public instruction to administer the program of training and qualifications of

school bus driver instructors consistent with the provisions of this chapter. The superintendent of public instruction shall determine the qualifications necessary for applicants for the school bus driver instructor course and qualifications necessary for continuation of the school bus driver instructor authorization. Each school bus driver instructor shall verify annually that they continue to meet said qualifications. Intentional falsification of school bus driver training records shall result in permanent ~~((disqualification))~~ revocation of the school bus driver instructor authorization. In the case of denial of authorization or disqualification, the superintendent of public instruction shall provide an appeal process consistent with the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 05-08-014, filed 3/28/05, effective 4/28/05)

WAC 180-20-101 ((Minimum qualifications of)) Initial requirements for school bus drivers. ~~((+))~~ Every authorized school bus driver must meet ~~((and continue to meet))~~ the following ~~((minimum))~~ initial requirements:

~~((a))~~ (1) Be at least twenty-one years of age.

~~((b))~~ (2) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.

~~((c))~~ (3) Have at least one year of experience as a driver of a truck or commercial vehicle requiring a special endorsement or, in the alternative, at least three years of experience as a driver of a passenger vehicle.

~~((d))~~ (4) Hold a current and valid first-aid card or equivalent which certifies that the applicant has completed a course in the basic principles of first aid.

~~((e))~~ (5) Submit to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial of authorization under (h), (i), and (j) of this subsection.

~~((f))~~ (6) Submit to a criminal record check according to chapter 28A.400 RCW which shows that no offenses have been committed which would be grounds for denial of an authorization.

~~((g))~~ (7) Shall not have misrepresented or concealed a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

~~((h))~~ (8) Shall not have had a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding three years or have had their commercial driver's license disqualified, suspended or revoked within the preceding three years; a certified copy of the disqualification, suspension or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension or revocation.

~~((i))~~ (9) Shall not have incurred three or more speeding tickets of ten miles per hour or more over the speed limit within the last thirty-six months.

~~((j))~~ (10) Shall not have been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a

plea of guilty or nolo contendere is the basis for the conviction) nor under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including but not limited to the following:

~~((i))~~ Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, sexual exploitation of a child under chapter 9.68A RCW; sexual offenses under chapter 9A.44 RCW where a minor is the victim; promoting prostitution of a minor under chapter 9A.88 RCW; the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction;

~~((ii))~~ Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription within the last seven years. Provided, That in the case of felony convictions, the applicable time limit shall be ten years;

~~((iii))~~ Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last three years;

~~((iv))~~ Any crime against children or other persons as defined in RCW 43.43.830(5) when the date of the conviction or prison release, which ever is more recent, is within ten years of the date of the job application for felonies and within seven years for other crimes.

~~((k))~~ Shall not have been found in any dependency action under RCW 13.34.030 to have sexually assaulted or exploited any minor or to have physically abused any minor, within the last seven years.

~~((l))~~ Shall not have been found by a court in a domestic relation proceeding under Title 26 RCW, to have sexually abused or exploited any minor or to have physically abused any minor, within the last seven years.

~~((m))~~ Shall not have been found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person, within the last seven years.

~~((n))~~ Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with an expired, lapsed, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter. Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended driver's license.

~~((o))~~ Shall not have a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, bus drivers, or other colleagues. This subsection shall not be applied so as to deny, revoke, or suspend authorizations to any individual for the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

~~((p))~~ Shall not have refused to take a drug or alcohol test as required by the provisions of 49 C.F.R. 382 within the preceding three years. Provided, this requirement shall not apply

to any refusal to take a drug or alcohol test prior to January 31, 2005.

(2) Every school bus driver must also meet and continue to meet the following requirements:

(a) Verification by a local school district that the person seeking a school bus driver authorization:

(i) Is physically able to maneuver and control a school bus under all driving conditions; and

(ii) Is physically able to use all hand/or foot operated controls and equipment found on state minimum specified school buses; and

(iii) Is physically able to perform daily routine school bus vehicle safety inspections and necessary emergency roadside services; and

(iv) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds.

(b) Provide verification of passing a medical examination every twenty-four months in accordance with the standards established in 49 C.F.R. 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. School bus drivers must continue to meet these medical examination requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.

(e)) (4) Satisfactorily complete a school bus driver training course and each year thereafter, satisfactorily complete a school bus driver in-service training course.

(5) Meet all applicable continuing school bus driver requirements in WAC 180-20-102.

NEW SECTION

WAC 180-20-102 Continuing requirements for authorized school bus drivers. Every authorized school bus driver must continue to meet the following requirements:

(1) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.

(2) Satisfactorily complete the annual school bus driver in-service training course.

(3) Hold a current and valid first-aid card which certifies that the applicant has completed a course in first aid.

(4) Submit annually to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial, suspension, or revocation of authorization under WAC 180-20-103.

(5) Every authorized school bus driver must continue to meet the following physical requirements:

(a) Is physically able to maneuver and control a school bus under all driving conditions; and

(b) Is physically able to use all controls and equipment found on state minimum specified school buses; and

(c) Is physically able to perform daily routine school bus vehicle safety inspections; and

(d) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds; and

(e) Provide verification of holding a current and valid medical examiner's certificate.

NEW SECTION

WAC 180-20-103 Disqualifying conditions for authorized school bus drivers. A school bus driver's authorization will be denied or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) Incurring three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referred within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available

evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

AMENDATORY SECTION (Amending WSR 04-08-055, filed 4/2/04, effective 5/3/04)

WAC 180-20-111 (~~Authorization required—Duration—Issuing procedures—~~) **Temporary authorizations—Requirements and issuing procedures.** (1) ~~(Every school bus driver shall meet the requirements for a school bus driver's authorization or temporary school bus driver's authorization issued in accordance with the provisions of this chapter. An authorization is no longer valid if suspended, lapsed, or revoked.~~

~~(2) A school bus driver's authorization shall continue in effect from year to year as long as the person continues to meet the requirements of this chapter or until the authorization lapses or is suspended or revoked.~~

~~(3) School bus driver authorizations shall be issued by the superintendent of public instruction upon request by an authorized representative of the employing school district. The employing school district shall forward to the superintendent of public instruction an application for a school bus driver authorization prior to issuance.~~

~~(4) The following verifications relating to the applicant must be provided by the employing school district:)~~ A temporary school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district when the following has been provided:

(a) Verification ~~((by a school bus driver instructor))~~ of successful completion of the school bus driver training course ~~((as required by this chapter)).~~

(b) Verification that it has on file a copy of a current and valid medical ~~((health certification as required by this chapter))~~ examiner's certificate.

(c) Verification that it has on file a current five-year complete driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record issued by the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days ~~((of))~~ prior to the date the application is being submitted for temporary authorization.

~~(d) ((Verification that the applicant has a current and valid first-aid card or equivalent.~~

~~((e)))~~ Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC ~~((180-20-104))~~ 180-20-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

~~((f)))~~ (e) Verification that it has ~~((on file the results of))~~ requested a criminal record check as required under chapter 28A.400 RCW and ~~((that such results establish that the applicant has not committed any offense which constitutes~~

~~grounds for denying, suspending, or revoking an authorization under this chapter)) the date of such request.~~

~~((g)) (f) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the education welfare or personal safety of students, teachers, bus drivers, or other colleagues.~~

~~((h)) (g) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter except for a first-aid card and/or the results of a criminal record check.~~

~~((5)(a) Upon approval of an application, the superintendent of public instruction shall issue a notice of school bus driver authorization to the employing school district.~~

~~(b) Subsequent authorizations for an individual driver with new or additional employing school districts must be issued from the superintendent of public instruction to such districts prior to the operation of any motor vehicle for the transportation of children.~~

~~(6) On or before August 15 of each year, the superintendent of public instruction will provide each school district with a list of authorized drivers and their status.~~

~~(7) A temporary authorization may be issued upon application by an authorized representative of the employing school district subject to compliance with the following provisions:~~

~~(a) Issuing procedure.~~

~~(i) Application for a temporary authorization must be approved by an authorized representative of the employing school district, verified by said school official that the applicant meets the qualification requirements set forth in WAC 180-20-101 (except for a course in first aid and/or the results of a requested criminal record check), and further verified by a school bus driver instructor that the applicant has satisfactorily completed the school bus driver training course, as defined in this chapter.~~

~~((ii)) (2) Upon approval of the temporary authorization, notice will be ~~((transmitted))~~ provided to the employing school district.~~

~~((b) Effective period:) (3) The temporary authorization shall be valid for a period of sixty calendar days ~~((and shall be nonrenewable: Provided, That the temporary authorization may be extended for a reasonable number of days when extenuating circumstances exist))~~. The temporary authorization may be renewed by approval of the regional transportation coordinator when the results of the criminal background check have not been received.~~

NEW SECTION

WAC 180-20-112 School bus driver authorization—Requirements and issuing procedures. A school bus driver authorization may be issued by the superintendent of public

instruction upon application by an authorized representative of the employing school district subject to compliance with the following provisions:

(1) The employing school district shall forward to the superintendent of public instruction the following verifications relating to the applicant:

(a) Verification of successful completion of the school bus driver training course taught by an authorized school bus driver instructor.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file a current five-year complete driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record issued by the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date an application was submitted for temporary authorization. If no request for a temporary school bus authorization was submitted, the issue date must be within sixty calendar days prior to the date of application of the school bus driver authorization.

(d) Verification that the applicant has a current and valid first-aid card.

(e) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC 180-20-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

(f) Verification that it has on file the results of a criminal record check as required under chapter 28A.400 RCW and that such results establish that the applicant has not committed any offense which constitutes grounds for denying, suspending, or revoking an authorization under this chapter and the date of such request.

(g) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues.

(h) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter.

(2) Upon approval of an application, the superintendent of public instruction shall issue a notice of school bus driver authorization to the employing school district.

(3) Subsequent authorizations for an individual driver with new or additional employing school districts must be issued from the superintendent of public instruction to such districts prior to the operation of any motor vehicle for the transportation of children.

(4) The superintendent of public instruction will provide each school district with a list of their authorized school bus drivers and each authorized school bus driver's status.

AMENDATORY SECTION (Amending WSR 02-18-055, filed 8/28/02, effective 9/28/02)

WAC 180-20-120 Discipline—Grounds for denial, suspension, or revocation of authorization—Emergency suspension—Appeals—Adjudicative proceedings. (1) A request for an authorization may be denied or an authorization issued under this chapter may be suspended or revoked for failure to meet any of the minimum requirements set forth in WAC 180-20-101 and 180-20-102 or for disqualifying conditions set forth in WAC 180-20-103, established by a preponderance of the evidence.

(2) Conduct, which by a preponderance of the evidence, amounts to a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues is grounds for denial, suspension, or revocation whether or not the conduct constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to denial, suspension, or revocation action. Upon such conviction, however, the judgment and sentence is conclusive evidence at the ensuing hearing of the guilt of the authorized driver or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based.

(3)(a) Any person in treatment for alcohol or other drug misuse shall have his or her authorization suspended until ~~((successful))~~ treatment is satisfactorily completed and the completion is confirmed by a state-approved alcohol or ~~((other))~~ drug treatment program at which time the authorization will be reinstated.

(b) In all cases of deferred prosecution under chapter 10.05 RCW, the authorization shall be suspended until the court confirms successful completion of the court approved treatment program at which time the authorization will be reinstated.

(4) Emergency suspension. If the superintendent of public instruction finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, emergency suspension of an authorization may be ordered pending proceedings for revocation or other action. In such cases, the superintendent of public instruction shall expedite all due process actions as quickly as possible.

(5)(a) Appeals and adjudicative proceedings. Any person desiring to appeal a denial, suspension, or revocation of a school bus driver authorization may do so to the superintendent of public instruction or designee in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC.

(b) The superintendent of public instruction may assign the adjudicative proceeding to the office of administrative hearings and may delegate final decision-making authority to the administrative law judge conducting the hearing.

(c) The superintendent of public instruction may appoint a person to review initial orders and to prepare and enter final agency orders in accordance with RCW 34.05.464.

(d) Any person who disagrees with the school district's determination of failure to meet any school bus driver authorization qualifications may request that the school district forward the pertinent records to the superintendent of public instruction. After review or investigation, the superintendent of public instruction shall grant, deny, suspend, or revoke the authorization.

AMENDATORY SECTION (Amending WSR 02-18-055, filed 8/28/02, effective 9/28/02)

WAC 180-20-135 School bus driver—Reporting. (1) Every person authorized under this chapter to operate a motor vehicle to transport children shall, within twenty calendar days, notify his or her employer in writing of the filing of any criminal charge involving conduct ~~((not meeting the standards))~~ listed in WAC ~~((180-20-101(1)))~~ 180-20-103. The authorized driver shall also notify his or her employer of any disqualifying traffic convictions, or license suspension or revocation orders issued by the department of licensing. In cases where the employer is providing transportation services through a contract with the school district, the contractor shall immediately notify the school district superintendent or designee.

(2) The notification in writing shall identify the name of the authorized driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

(3) The failure of an authorized driver to comply with the provisions of this section is an act of unprofessional conduct and constitutes grounds for authorization suspension or revocation by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 93-08-007, filed 3/24/93, effective 4/24/93)

WAC 180-20-140 School district—Reporting. (1) Every school district employing authorized school bus drivers to transport children or contracting with a private firm who provides such authorized drivers as a part of a contract shall, within twenty calendar days, notify the superintendent of public instruction in writing of knowledge it may have of the filing of any criminal charge involving the conduct ~~((not meeting the standards))~~ listed in WAC ~~((180-20-101))~~ 180-20-103 against any authorized school bus driver.

(2) The notification in writing shall be by certified or registered mail and shall identify the name of the authorized school bus driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

AMENDATORY SECTION (Amending WSR 96-20-042, filed 9/24/96, effective 10/25/96)

WAC 180-20-145 School district—Verification of drivers continuing compliance. (1) Every school district shall evaluate each authorized school bus driver for continuing compliance with the provisions of this chapter annually.

The results of this evaluation of all drivers shall be forwarded to the superintendent of public instruction ~~((as follows:))~~ on SPI Form 1799, Verification Statement and Confirmation of Updated Records, no later than November 15th of each year.

(2) This report shall ~~((be added to the regular school bus driver status report (Report 1799) exchanged between all school districts and the superintendent of public instruction))~~ verify that each authorized school bus driver's medical examination certificate expiration date, first-aid expiration date, driver's license expiration date and most recent school bus driver in-service training date has been updated in compliance with OSPI procedures.

(3) ~~((Verification that each authorized driver's criminal history record contains no convictions or charges which would be grounds for revocation or suspension of a school bus driver authorization:))~~ This report shall verify that each authorized school bus driver has made an updated disclosure in writing and signed and sworn under penalty of perjury which updates the disclosure required in WAC ~~((180-20-101(1)(e)))~~ 180-20-102(4).

(4) This report shall ~~((be a written verification that the evaluation has been conducted in accordance with the requirements of this chapter and that all drivers are in compliance, or if all drivers are not in compliance, a list of drivers who are out of compliance and the reason for noncompliance shall be provided))~~ verify that each authorized school bus driver's five-year driving record is in compliance with WAC 180-20-103.

(5) This report shall verify that each authorized school bus driver remains in compliance with the physical requirements of WAC 180-20-102(5).

(6) This report shall be a written verification that the evaluation has been conducted in accordance with the requirements of this chapter and that all drivers are in compliance, or if all drivers are not in compliance, a list of drivers who are out of compliance and the reason for noncompliance shall be provided.

WSR 05-19-108

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:54 p.m., effective October 21, 2005]

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

Purpose: The revision aligns state board policy with legislation passed in the 2005 session.

Citation of Existing Rules Affected by this Order: Amending WAC 180-27-035.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 05-15-058 on July 12, 2005.

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

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

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

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

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

Date Adopted: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 01-19-044, filed 9/14/01, effective 10/15/01)

WAC 180-27-035 Space allocations. (1) State assistance in the construction of school facilities for grades kindergarten through twelve and classrooms planned for the exclusive use of students with disabilities shall be based on a space allowance per enrolled student and for state matching purposes shall be computed in accordance with the following table:

Grade or Area	<u>Through</u>	<u>Beginning</u>
	<u>June 30, 2006</u>	<u>July 1, 2006</u>
	<u>Maximum</u>	<u>Maximum</u>
	<u>Matchable Area</u>	<u>Matchable Area</u>
	<u>Per Student</u>	<u>Per Student</u>
Grades kindergarten through six	80 square feet	<u>90 square feet</u>
Grades seven and eight	110 square feet	<u>117 square feet</u>
Grades nine through twelve	120 square feet	<u>130 square feet</u>
Classrooms for students with disabilities	140 square feet	<u>144 square feet</u>

For purposes of this subsection, students with disabilities shall be counted as one student for each such student assigned to a specially designated self-contained classroom for students with disabilities for at least one hundred minutes per school day, calculated on actual headcount enrollment submitted to the superintendent of public instruction.

(2) State assistance for construction of vocational skill centers shall be based on one-half of students enrolled on October 1 and computed as follows:

Type of Facility	<u>Maximum Matchable Area</u>
	<u>Per One-Half Enrolled Student</u>
Skill Centers	140 square feet

(3) Space allowance for state matching purposes for districts with senior or four-year high schools with fewer than four hundred students shall be computed in accordance with the following formula:

Number of Headcount Student-Grades 9-12	Maximum Matchable Area Per Facility
0-100	37,000 square feet
101-200	42,000 square feet
201-300	48,000 square feet
301-or more	52,000 square feet

WSR 05-19-109

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:55 p.m., effective October 21, 2005]

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

Purpose: The changes will phase out the 75% rule exception for school construction funding.

Citation of Existing Rules Affected by this Order: Amending WAC 180-33-025.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 05-15-059 on July 12, 2005.

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

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

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

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

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

Date Adopted: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 98-09-052, filed 4/16/98, effective 5/17/98)

WAC 180-33-025 Space eligible for state financial assistance in modernization. Space allowance and enrollment projection provision for state matching purposes.

(1) In planning for modernization in any school facility, under the provisions of WAC 180-33-015 (1)(a) and (b), a school district shall estimate capacity needs on the basis of a cohort survival enrollment as per WAC 180-27-045. Any space above and beyond a school district's estimated capacity needs as calculated on the basis of a five-year cohort survival or adjusted cohort survival enrollment shall not be eligible for state financial assistance in modernization ((with the exception as stated in subsection (2) below)).

~~(2) ((In computing the amount of eligible space for modernization, the state will match the entire facility if 3/4 of the overall square footage of the school district's facilities is eligible for state financial assistance. If less than 3/4 of the overall square footage of the school district's facilities is eligible for state financial assistance, the district shall pay the entire cost of modernizing any additional space: Provided, That this subsection shall not be applicable to new construction in lieu of modernization facility projects authorized by this chapter.~~

(3) In planning for modernization in any combined facility as per WAC 180-33-015 (3)(c) a school district shall estimate enrollment in the district on the basis of a cohort survival enrollment as per WAC 180-27-045.) The changes to this section shall take effect January 1, 2006: Provided, That those districts having authorized bond issues and/or excess tax levies for their building funds for specific school construction projects as identified in ballot propositions on or before July 1, 2006, may, when requesting state board of education consideration of state assistance for such projects, determine, in computing the amount of eligible space for modernization, the state will match the entire facility of three quarters of the overall square footage of the school districts' facilities is eligible for state financial assistance: Provided further, That the provision shall not be applicable to new construction in lieu of modernization facility projects authorized by this chapter.

WSR 05-19-110

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:56 p.m., effective October 21, 2005]

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

Purpose: The revisions to this section set the area cost allowance for 2005 and 2006 per legislative action in the 2005 session.

Citation of Existing Rules Affected by this Order: Amending WAC 180-33-035.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 05-15-061 on July 12, 2005.

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

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

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

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

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

Date Adopted: August 26, 2005.

Larry Davis
Executive DirectorAMENDATORY SECTION (Amending WSR 01-19-042, filed 9/14/01, effective 10/15/01)

WAC 180-33-035 Minimum project—Forty percent of replacement costs. (1) State assistance in modernization of school facilities shall be limited to projects which may include an entire facility or one or more complete buildings within a facility for which the estimated cost of major structural change is not less than forty percent of the estimated cost of replacement. The estimated cost of major structural change shall not include the estimated capital costs associated with restoring building systems or subsystems due to deterioration as determined in the study and survey to be caused by deferred maintenance. The estimated cost of replacement shall be derived from multiplication of the total square foot area of the facility or facilities proposed for modernization by the area cost allowance for the fiscal year funded as in WAC 180-27-045 set forth.

(2) The state board of education may grant a waiver from subsection (1) of this section in the event of an unanticipated increase in the area cost allowance that might cause prior approved projects expecting state assistance to become disqualified for such assistance.

WSR 05-19-111**PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed September 20, 2005, 1:57 p.m., effective October 21, 2005]

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

Purpose: The revision increases the amount of maximum costs eligible for state match per legislative action during the 2005 session.

Citation of Existing Rules Affected by this Order: Amending WAC 180-33-040.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 05-15-065 on July 12, 2005.

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

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

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

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

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

Date Adopted: August 26, 2006 [2005].

Larry Davis
Executive DirectorAMENDATORY SECTION (Amending WSR 98-19-138, filed 9/23/98, effective 10/24/98)

WAC 180-33-040 Maximum costs eligible for state matching purposes—~~((Eighty))~~ One hundred percent of replacement cost. State assistance for modernization projects shall not exceed ~~((eighty))~~ one hundred percent of the cost of new construction of a comparable school facility based on the prevailing level of state support as defined in chapter 180-27 WAC. Costs exceeding ~~((eighty))~~ one hundred percent shall be paid by the local district.

WSR 05-19-112**PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed September 20, 2005, 1:57 p.m., effective October 21, 2005]

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

Purpose: The revisions and additions to chapter 180-24 WAC clarify the process of transferring territory from one school district to another.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-24-215; and amending WAC 180-24-00701, 180-24-210, and 180-24-195.

Statutory Authority for Adoption: RCW 28A.305.130 (10), 28A.315.015 (2)(e), 28A.315.175, 28A.315.195.

Adopted under notice filed as WSR 05-15-139 on July 19, 2005.

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 3, Amended 3, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 3, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 3, 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 26, 2005.

Larry Davis
Executive DirectorAMENDATORY SECTION (Amending WSR 03-23-040, filed 11/12/03, effective 12/13/03)

WAC 180-24-00701 Regional committee decision making criteria. (1) The regional committee shall give consideration to all of the following criteria when reviewing the proposed transfer of territory:

(a) Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);

(b) Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);

(c) History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;

(d) Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);

(e) Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and

(f) Other criteria or considerations as may be established in rule by the state board of education. (RCW 28A.315.015 (2)(e).)

(2) ~~((Under RCW 28A.315.195(2)))~~ The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) Under RCW 28A.315.205(4), "geographic accessibility" includes, but is not limited to, consideration of the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

(4) In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a sufficient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(5) In considering geographic accessibility under subsection (1)(d) of this section, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.

(6) Each regional committee shall use the same criterion checklist included in the *Lay Persons's Guide to School District Boundaries* and published on the state board of education and superintendent of public instruction web sites.

(7) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.

(8) Regional committees shall use the decision format (motion) included in the *Lay Person's Guide to School District Boundaries* and published on the state board of education and superintendent of public instruction web sites.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-195 Notification to ~~((superintendent of public instruction))~~ state board of education of regional committee meetings. The secretary of each regional committee—i.e., the educational service district superintendent—shall notify the ~~((superintendent of public instruction))~~ state board of education of all meetings of the regional committee ~~((called pursuant to RCW 28A.315.100 and all proposals pursuant to RCW 28A.315.110)).~~

NEW SECTION

WAC 180-24-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of territory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the *Lay Person's Guide to School District Boundaries* and published on the state board of education and superintendent of public instruction web sites shall be used.

NEW SECTION

WAC 180-24-209 Transfer of territory—Sufficiency of written record for appeal to state board of education—Referral of case back to regional committee. (1) For purposes of review by the state board of education, the record of regional committee proceedings must be sufficient to allow the state board of education to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the state board of education will make every effort to submit the written referral within fourteen days of its decision.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-210 Adjustment of assets and liabilities—Considerations. (1) In determining an equitable

adjustment of assets and liabilities, the negotiating school districts(~~(-)~~) and the regional committees(~~(-and the state board of education)~~) shall consider the factors under RCW 28A.315.245.

(2) A regional committee is authorized to phase in the adjustment of assets and liabilities over a period not less than two years nor more than eight years. This authorization is subject to the annual March 1 deadline for taxing districts to establish the taxing boundaries and rates for the ensuing tax collection year.

NEW SECTION

WAC 180-24-213 Student enrollment effective under approved transfer of territory. When a proposed transfer of territory has finally been approved, students in the affected territory may begin attending the appropriate school in the next logical term within the school year or beginning with the next school year, as determined by the parent(s) or legal guardian(s) of the student.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-24-215	Superintendent of public instruction staff review of regional committee proposals—When.
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**WSR 05-19-138
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 21, 2005, 8:51 a.m., effective October 22, 2005]

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

Purpose: A new section is needed in chapter 392-121 WAC, Finance—General apportionment, to implement language from the recently passed 2005-07 budget that directs the Office of Superintendent of Public Instruction to develop criteria to award incentive grants to encourage school districts to increase enrollment in vocational skills centers. Up to \$500 for each full-time equivalent student may be proportionally distributed to school district(s) increasing skills centers enrollment above the levels in the 2004-05 school year.

Citation of Existing Rules Affected by this Order: New section WAC 392-121-465.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 05-13-094 on June 16, 2005.

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 [1], Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3 [1], Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3 [1], Amended 0, Repealed 0.

Date Adopted: September 20, 2005.

Dr. Terry Bergeson
Superintendent of
Public Instruction

NEW SECTION

WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program. The purpose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's annual incentive payment.

(4) The superintendent of public instruction shall apportion to districts for the state incentive grants for increased enrollment in vocational skills centers the amount calculated per district in this section in June of each year commencing June 2006.

**WSR 05-19-139
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 21, 2005, 8:52 a.m., effective October 22, 2005]

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

Purpose: The intention has always been to keep the work based learning rules consistent across all K-12 education, regardless of whether the work based learning takes place in a high school or an institution. Therefore, the insti-

tution education WAC 392-122-212 needs to reflect changes made to basic education work based learning rules. The change is to refer to the basic education work based learning WAC in the institution WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-212.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 05-13-097 on June 16, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: September 20, 2005.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 98-09, filed 10/20/98, effective 11/20/98)

WAC 392-122-212 Definition—State institutional education program—Educational activity. As used in WAC 392-122-200 through 392-122-275, "educational activity" means the following teaching/learning experiences provided by a school district or other education provider:

(1) Instruction, testing, counselling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

(2) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if the study is monitored by educational staff who are present during the study.

(3) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

(a) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

(b) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

(c) The student is making progress in the program;

(d) The study is not counted as work training experience pursuant to subsection (4) of this section; and

(e) Combined individual study time and scheduled study time pursuant to subsection (2) of this section claimed in

determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

(4) Work (~~(experience training)~~) based learning meeting the requirements of WAC 180-50-315: Provided, That (~~(each hour of work training experience shall be considered equivalent to 0.40 hours of educational activity)~~) for work based learning provided pursuant to WAC 180-50-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

WSR 05-19-140

PERMANENT RULES

SUPERINTENDENT OF

PUBLIC INSTRUCTION

[Filed September 21, 2005, 8:54 a.m., effective October 22, 2005]

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

Purpose: To revise current rules to:

- Include the emergency expulsion WAC reference in the expulsion in subsection (5).
- Clarify that the agreement in the absence exception in subsection (1)(a) needs to be written.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-108.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 05-13-096 on June 16, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2 [1], Repealed 0.

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

Date Adopted: September 20, 2005.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-108 Definition—Enrollment exclusions. A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence

from school exceed twenty school days shall not be counted as an enrolled student until attendance is resumed.

(a) If there is ~~((a))~~ a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172-218 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - a student for whom the school district has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - a student who has transferred to another public or private school and for whom the school district has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district.

(4) Suspensions - a student who has been suspended from school pursuant to WAC 180-40-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - a student who has been expelled from all school subjects or classes by the school district pursuant to WAC 180-40-275 or 180-40-290 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC 180-40-275 or 180-40-290 may be considered a part-time enrolled student.

(6) Graduates - a student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

WSR 05-19-142

PERMANENT RULES

EXECUTIVE ETHICS BOARD

[Filed September 21, 2005, 9:00 a.m., effective October 22, 2005]

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

Purpose: Add definition of lobbying; set out date, time and place of board meetings.

Citation of Existing Rules Affected by this Order: Amending WAC 292-100-007 and 292-130-030.

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

Adopted under notice filed as WSR 05-16-022 on July 25, 2005.

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 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: September 9, 2005.

Susan Harris
Executive Director

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, the investigator, attorneys who bring cases before the board, and the training and information specialist.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) "Lobbying," for the purposes of RCW 42.52.380, does not include written communication by the board to members of the state legislature or to any other government official on matters pertaining directly to the Ethics in Public Service Act.

(5) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

~~((5))~~ (6) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

~~((6))~~ (7) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

~~((7))~~ (8) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-130-030 Operations and procedures. The board holds regular scheduled meetings ~~((in accordance with a schedule filed with the code reviser's office and published in the Washington State Register))~~ on the second Friday of each month at 9:00 a.m. unless a different time is noted on the agenda, except August and December when no meetings are held. The meetings are held at 2425 Bristol Court, Conference Room 148, unless circumstances require relocating to

another site as designated by the executive director of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

