

**WSR 07-04-002**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed January 24, 2007, 2:58 p.m., effective February 24, 2007]

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

Purpose: Include principal alternative route pilot program for one year and identify the elements of such a program.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-272.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-24-079 on December 5, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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Date Adopted: January 17, 2007.

Nasue Nishida  
 Policy and Research Analyst

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

**WAC 181-78A-272 Approval of residency certificate preparation programs for principals/program administrators, school psychologists, school counselors and school social workers.** (1) Colleges/universities offering residency certificate programs for principals/program administrators shall have these programs approved by the professional educator standards board by August 31, 2004. Colleges/universities offering residency certificate programs for school psychologists, school counselors, and school social workers shall have these programs approved by the professional educator standards board by August 31, 2005.

(2) Principal alternative route pilot program. Colleges and universities with approved residency certificate programs will be invited to participate.

(a) The program shall be comprised of the following:

(i) Two summer academies plus a year long mentored internship:

(ii) Assignment of the intern to a full-time second level administrative position for one school year while enrolled in the alternative route program.

(iii) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

(b) The pilot will be implemented for one academic year beginning June 2007.

**WSR 07-04-003**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed January 24, 2007, 2:58 p.m., effective February 24, 2007]

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

Purpose: For the creation of an alternative route for principals program by adding "provisional alternative administrative certificate[]" to the list.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-140 and 181-79A-231.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-24-077 on December 5, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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Date Adopted: January 17, 2007.

Nasue Nishida  
 Policy and Research Analyst

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

**WAC 181-79A-140 Types of certificates.** Six types of certificates shall be issued:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-220, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first people's language/culture teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

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

**WAC 181-79A-231 Limited certificates.** Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from a regionally accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school

will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed thirty consecutive school days during the school year in any one assignment. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators whose state of regular Washington certificates have expired; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at regionally accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d).

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for specific positions may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold the appropriate degree and have substantially completed a program of preparation in accordance with Washington requirements for certification: Provided, That a qualified person who holds regular certification is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That a candidate for emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in an approved school psychologist preparation program and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to

serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing certificate has lapsed according to WAC 181-85-040 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must complete any continuing certificate reinstatement requirements established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

#### WSR 07-04-004

##### PERMANENT RULES

### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed January 24, 2007, 2:59 p.m., effective February 24, 2007]

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

Purpose: Comply with SB 5983 to "provide criteria for the approval of educational service districts, beginning no later than August 31, 2007, to offer programs leading to professional certification. The rules shall be written to encourage institutions of higher education and educational service districts to partner with local school districts or consortia of school districts, as appropriate, to provide instruction for teachers seeking professional certification..."

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-207, 181-78A-209, 181-78A-250, 181-78A-500, 181-78A-505, 181-78A-515, 181-78A-520, 181-78A-525, 181-78A-530, and 181-78A-535.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-24-078 on December 5, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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Date Adopted: January 17, 2007.

Nasue Nishida  
Policy and Research Analyst

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

**WAC 181-78A-207 Qualification to be appointed to a college or university professional education advisory board((s)).** (1) Appointees to service on professional education advisory boards from required agencies, other than the designee(s) of the college or university president, at the time of their appointment, must be employed in or reside in a school district with which the college or university has a current written agreement to provide field experiences for students involved in the preparation program for which the professional education advisory board has responsibility.

(2) Professional education advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional education advisory board consist of representatives who meet the qualifications of subsection (1) of this section and who are from the role for which the professional education advisory board has responsibility.

(3) If any professional education advisory board receives a written request from other school districts or other public or private agencies for representation on such professional education advisory board, the current members of such professional education advisory board shall vote on such request at the next regular meeting of such board: Provided, That a college or university may elect to add private school representatives to a professional education advisory board without add-

ing to the representation from the role for which the professional education advisory board has responsibility if the professional education advisory board authorizes such action by a majority vote.

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

**WAC 181-78A-209 College or university professional education advisory boards—Membership.** The professional education advisory boards shall at a minimum consist of the following:

**(1) TEACHER.**

(a) One-half or more of the voting members shall be classroom teachers. All, but one, will be appointed by the president of the Washington Education Association. One of these teachers shall be employed in a private school and appointed by the Washington Federation of Independent Schools.

(b) At least one principal appointed by the president of the Association of Washington School Principals.

(c) At least one school administrator appointed by the Washington Association of School Administrators.

(d) At least one college or university representative who may serve in a voting or nonvoting role.

(e) At colleges or universities where career and technical education programs are offered, one career and technical education director or career and technical education teacher, with expertise in one of the approved career and technical education programs at the college or university, appointed by the Washington Association of Vocational Administrators in cooperation with the college or university.

**(2) ADMINISTRATOR.**

(a) One-half or more of the voting members shall be administrators. One-half of these administrators (at least one-fourth of the total voting membership) shall be appointed by the president of the Washington Association of School Administrators. All but one of the remaining administrators shall be appointed by the president of the Association of Washington School Principals. The remaining administrator shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more classroom teachers appointed by the president of the Washington Education Association.

(c) At least one college or university representative who may serve in a voting or nonvoting role.

**(3) SCHOOL COUNSELOR.**

(a) At least one-half of the voting members shall be school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

**(4) SCHOOL PSYCHOLOGIST.**

(a) At least one-half of the voting members shall be school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

**(5) SCHOOL SOCIAL WORKER.**

(a) At least one-half of the voting members shall be school social workers appointed by the president of the Washington Association of School Social Workers.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

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

**WAC 181-78A-250 Approval standards~~((—))~~professional education advisory board.** Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(1):

(1) The college or university professional education advisory board has been established in accordance with WAC 181-78A-209.

(2) The educational service district professional education advisory board for a teacher professional certification program has been established in accordance with WAC 181-78A-520.

(3) The professional education advisory board has adopted operating procedures and has met at least four times a year.

~~((3))~~ (4) The professional education advisory board has reviewed all program approval standards at least once every five years.

~~((4))~~ (5) The professional education advisory board annually has reviewed follow-up studies, placement records, and summaries of performance on the pedagogy assessment for teacher candidates.

~~((5))~~ (6) The professional education advisory board has made recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

~~((6))~~ (7) The professional education advisory board annually has seen, reviewed and approved an executive summary of the activities of the professional education advisory

board. The college ((~~or~~)), university or educational service district has submitted the approved executive summary to the professional educator standards board.

((~~7~~)) (8) The professional education advisory board for administrator preparation programs participated in the candidate selection process for principal preparation programs.

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

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

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

**WAC 181-78A-505 Overview—Teacher professional certificate program.** (1) By September 1, 2001, all colleges ((~~and~~)), universities or educational service districts offering a professional certificate program must be in compliance with the new program standards.

(2) To obtain a professional certificate, the residency teacher will need to complete a professional educator standards board-approved professional certificate program collaboratively developed by a college((~~or~~)), university or educational service district and the professional educational advisory board (PEAB).

(3)(a) Prior to full admission to a professional certificate program, excluding the preassessment seminar, the candidate shall complete provisional status with a school district under RCW 28A.405.220, or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students.

(b) The candidate may be fully admitted to the professional certificate program, prior to completion of provisional status, if the candidate provides to the program a letter from the candidate's employing school district, private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program.

(4) The professional certificate requires successful demonstration of three standards (effective teaching, professional development, and professional contributions) and 12 criteria, pursuant to WAC 181-78A-540, related to these standards. Wherever appropriate, the residency teacher will need to provide evidence that his/her teaching has had a positive impact on student learning as defined in WAC 181-78A-010(8).

(5)(a) The candidate and college ((~~or~~)), university or educational service district shall develop an individual professional growth plan to be reviewed and agreed upon after input from and consultation and collaboration (WAC 181-78A-010(9)) with his/her professional growth team.

(b) The individual professional growth plan will be based on an analysis of the student/learning context in that teacher's assignment and a preassessment of that teacher's ability to demonstrate the standards and criteria set forth in WAC 181-78A-540.

(c) The individual professional growth plan shall include instruction and assistance components for each residency teacher. The instruction and assistance components will be designed to give the residency teacher the necessary knowledge and skills needed to demonstrate successfully the standards and criteria set forth in WAC 181-78A-540.

(6) The final component of the program will be a culminating assessment seminar in which the residency teacher's ability to demonstrate the standards and criteria cited above will be evaluated. These assessments shall include multiple forms of data collected over time, including evidence of positive impact on student learning, where appropriate.

(7) As part of the program development, the college((~~or~~)), university or educational service district and the PEAB shall establish criteria and procedures for determining when the residency teacher has successfully completed the program. When the program administrator has verified to the superintendent of public instruction that the candidate has completed the approved program, the state will issue the residency teacher a professional certificate.

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

**WAC 181-78A-515 Program approval standards for professional certificate approved programs.** The program approval standards for approved programs for teachers are as follows:

(1) **Professional education advisory boards.** The college ((~~or~~)), university or educational service district, in compliance with the provisions of WAC 181-78A-250 and 181-78A-520, has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program for teachers.

(2) **Accountability.** Each college ((~~or~~)), university or educational service district, in compliance with the provision of WAC 181-78A-525, has established a performance-based program.

(3) **Resources.** The college ((~~or~~)), university or educational service district, in compliance with the provision of WAC 181-78A-530, is responsible for providing the resources needed to develop and maintain quality professional programs.

(4) **Program design.** Each college ((~~or~~)), university or educational service district, in compliance with the provision of WAC 181-78A-535, is responsible for establishing an approved professional certificate program which accommodates the individual professional growth needs of each candidate as set forth in his/her professional growth plan.

(5) **Knowledge and skills.** Each college ~~((and))~~, university or educational service district, in compliance with the provision of WAC 181-78A-540, has established policies requiring that all candidates for certification demonstrate the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

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

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

(1) College or university.

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

~~((2))~~ (b) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

~~((3))~~ (c) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

~~((4))~~ (d) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

(2) Educational service district.

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

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

(i) Educational service district teacher assistance program coordinator;

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

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

(iv) One district human resource representative;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Submit annual evaluations of the professional certificate program until the program receives full approval and participate in a less intensive evaluation cycle every three years thereafter.

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

Provided, That the on-site reviews shall be scheduled on a five-year cycle unless the professional educator standards board approves a variation in the schedule.

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

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

**WAC 181-78A-530 Approval standard—Resources.**

The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the resources program approval standard of WAC 181-78A-515(3):

(1) Administrators, faculty, and teachers implementing the college, university or educational service district professional certificate program have appropriate qualifications (academic, experience, or both) for the roles to which they are assigned. Such responsibilities may be shared, when appropriate, among the collaborating agencies.

(2) The college ~~((or))~~, university or educational service district shall have responsibility for maintaining fiscal records and ensuring adequate financial support for the professional certificate program.

(3) Instructional, technological, and other needed resources shall be sufficient in scope, breadth, and recency to support the professional certificate program.

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

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

(1) **Teacher.**

(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described in subsection (4)(a) of this section prior to admission to a professional certificate program.

(b) The professional certificate program must be available to all qualified candidates. An expedited professional certificate process shall be available for out-of-state teachers who have five or more years of successful teaching experience to demonstrate skills and impact on student learning.

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

(d) Each program shall consist of:

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

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

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

The individual professional growth plan shall be based on:

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



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

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

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

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

(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).

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

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

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

**(2) Principal/program administrator.**

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as an administrator for which the credential is required in a public school or professional educator standards board-approved private school.

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

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

development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) A preassessment seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with his/her professional growth team (WAC 181-78A-010 (10)(b)). The individual professional growth plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

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

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; development of a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

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

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

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

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

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

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

(d) Each program shall consist of:

(i) A preassessment seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demon-

strate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

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

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

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

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

#### WSR 07-04-005

##### PERMANENT RULES

#### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed January 24, 2007, 3:22 p.m., effective February 24, 2007]

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

Purpose: Change implementation of educational staff associates (ESAs) professional certificate programs from September 1, 2007, to September 1, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-509.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-24-081 on December 5, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 17, 2007.

Nasue Nishida  
Policy and Research Analyst

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

**WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs.** By September 1, ((2007)) 2008, all colleges and universities offering ESA professional certificate programs must be in compliance with the new program standards. To obtain a professional ESA certificate, individuals will need to hold a valid ESA residency certificate, be employed in his/her ESA role in a public school district, professional educator standards board-approved private school or state agency providing educational services for students, and complete a professional educator standards board-approved professional ESA certificate program in his/her ESA role.

(1) The professional certificate requires successful demonstration of the ESA role standards at the professional certificate benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

(2) The candidate shall develop an individual professional growth plan to be reviewed and agreed upon after input from and consultation with his/her professional growth team. The individual growth plan shall be based on an assessment of the candidate's ability to demonstrate standards at the professional benchmark level and evidence of a positive impact on student learning.

#### WSR 07-04-009

##### PERMANENT RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 25, 2007, 10:01 a.m., effective February 28, 2007]

Effective Date of Rule: February 28, 2007.

Purpose: Chapter 296-19A WAC, Vocational rehabilitation, based on a court ruling, the department will repeal the rules that establish the criteria used to evaluate a vocational provider's performance; the performance measurements used to make referrals to providers; and how the department evaluates a vocational rehabilitation consultant's performance when he or she does not have a performance rating or previous experience delivering services to Washington injured workers.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-19A-280, 296-19A-290, and 296-19A-300.

Statutory Authority for Adoption: RCW 51.04.010.

Adopted under notice filed as WSR 06-23-125 on November 21, 2006.

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 3.

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

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

Date Adopted: January 25, 2007.

Judy Schurke  
Acting Director

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

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

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

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

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

Date Adopted: January 18, 2007.

Nasue Nishida  
Policy and Research Analyst

### REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |  |
|-----------------|--|
| WAC 296-19A-280 | What criteria does the department use to evaluate a vocational rehabilitation provider's performance?  |
| WAC 296-19A-290 | How does the department incorporate performance measurement into making referrals to providers?  |
| WAC 296-19A-300 | How does the department evaluate performance when a vocational rehabilitation provider does not have either a performance rating with the department or previous experience delivering services to Washington injured workers? |

**WSR 07-04-015**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed January 25, 2007, 10:51 a.m., effective February 25, 2007]

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

Purpose: To make the first peoples' language/culture certificate program permanent.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-700.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-24-080 on December 5, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

AMENDATORY SECTION (Amending WSR 06-11-161, filed 5/24/06, effective 6/24/06)

**WAC 181-78A-700 First peoples' language/culture certification pilot (~~(program)~~)—Findings, purposes and intent—Definitions—(~~(Pilot)~~) Program established—Tribal eligibility to participate—(~~(Pilot))~~ Program requirements—Assignment of teachers—Reports. (1) FINDINGS.** The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "... A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section (~~is to establish a pilot~~) of the established first peoples' language/culture program is to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions and best practices for the training of first peoples' language/culture teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord and the 2000 Millennium Accord between Washington state and the sovereign tribal governments in the state of Washington(-);

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school

and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Washington state first peoples' language/culture teacher certification program (~~on a pilot basis~~) in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language/culture certification (~~pilot~~) programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "...Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

**(4) DEFINITIONS.**

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "...to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives...";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

**(5) ~~(PILOT)~~ PROGRAM ESTABLISHED.** A Washington state first peoples' language/culture teacher certification program is established in ~~((February 2003))~~ January 2007. ~~((Following completion of the reporting requirements in subsection (9) of this section, the program will be extended, modified or made permanent, as determined by the professional educator standards board in consultation with participating sovereign tribal governments.))~~ First peoples' language/culture teacher certificates issued prior and subsequent to June 30, 2006, shall ~~((expire June 30, 2007, subject to any extension or modification made by the professional educator standards board))~~ be kept valid per subsection (7)(d)(iv) of this section.

**(6) TRIBAL ELIGIBILITY TO PARTICIPATE.** Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the pilot program.

**(7) ~~(PROJECT)~~ PROGRAM REQUIREMENTS.**

(a) Each sovereign tribal government will appoint and certify individuals who meet the tribe's criteria for certification as instructors in the Washington state first peoples' language/culture ~~((pilot))~~ program.

(b) Each sovereign tribal government's language/culture ~~((project))~~ program shall submit to the professional educator standards board the following information for each eligible language/culture teacher desiring to participate in the ~~((pilot project))~~ program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language/culture certificate;

(c) After meeting the requirements of subsection (8)(b) of this section and receiving professional educator standards board approval, the office of the superintendent of public instruction shall issue each teacher a Washington state first peoples' language/culture teaching certificate;

(d) Tribes will individually determine the continuing education and first peoples' language/culture certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following. Notify the certification division of the office of superintendent of public instruction when:

(i) A teacher has met the requirements for renewal/continuing education; or

(ii) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language/culture certificate; or

(iii) A tribe, at any time, withdraws a teacher certification for any reason.

(iv) Every five years, the tribes will provide documentation that the certificate holder continues to meet the requirements of (a) of this subsection;

(e) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the project can continue to receive instruction throughout the three years of the project;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of ~~((+))~~ (e)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

~~((e) To support))~~ (f) To document a positive impact on student learning, the sovereign tribal government's lan-

guage/culture program ~~((will))~~ is encouraged to provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achievement of the program learning goals as established by each sovereign tribal government's language/culture program;

~~((f))~~ (g) To support a greater understanding of the government-to-government relationship, the professional development and certification committee of the professional educator standards board and the professional educator standards board are strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

~~((g))~~ (h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

**(8) ASSIGNMENT OF TEACHERS.**

(a) The holder of a Washington state first peoples' language/culture teacher certificate shall be deemed qualified to be a teacher of first peoples' language/culture with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language/culture teacher certificate qualifies the holder to accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language/culture teacher certificate who does not also hold an initial or residency certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language/culture teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language/culture teacher certificate will serve as the sole endorsement in first peoples' language/culture for anyone holding an initial or residency certificate.

**(9) ~~(REPORTS:~~**

~~(a) Annually, for the duration of the pilot program, each participating tribe shall submit a report to the professional educator standards board with documentation of how its particular project is having a positive impact on student learning.~~

~~(b) Not later than October 31, 2006, a committee of the professional educator standards board, in consultation with the participating sovereign tribal governments, shall create and submit a report to the professional educator standards board with the following information:~~

~~(i) An end of program analysis of the positive impact on student learning of each pilot project;~~

~~(ii) An appraisal of the government-to-government relationships established under the program, at both the state and local levels; and~~

~~(iii) The report shall include a recommendation on whether to extend, modify or make permanent the Washing-~~

~~ton state first peoples' language/culture teacher certification pilot program.)~~ **TRIBAL PREPARATION PROGRAM REVIEW.**

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the individual tribal programs.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

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

**WSR 07-04-027**

**PERMANENT RULES**

**WASHINGTON STATE UNIVERSITY**

[Filed January 29, 2007, 11:01 a.m., effective March 1, 2007]

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

Purpose: Repeal current procedures at chapter 504-44 WAC and adopt new chapter 504-45 WAC for requesting public records from Washington State University which incorporate suggestions and wording from the attorney general's Public Records Act model rules.

Citation of Existing Rules Affected by this Order: Repealing chapter 504-44 WAC.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 06-20-083 on October 2, 2006.

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 8, Amended 0, Repealed 18.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 18.

Number of Sections Adopted Using Negotiated Rule Making: New 8, Amended 0, Repealed 18; Pilot Rule Mak-

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

Date Adopted: January 26, 2007.

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

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-44-010	Purpose.
WAC 504-44-020	Definitions.
WAC 504-44-030	Description of central and field organization of Washington State University.
WAC 504-44-040	Operations and procedures.
WAC 504-44-050	Public records available.
WAC 504-44-060	Public records officer.
WAC 504-44-070	Office hours.
WAC 504-44-080	Requests for public records.
WAC 504-44-090	Copying.
WAC 504-44-100	Exemptions.
WAC 504-44-110	Review of denials of public records requests.
WAC 504-44-120	Protection of public records.
WAC 504-44-130	Records index.
WAC 504-44-140	Communications to the university.
WAC 504-44-150	Adoption of form.
WAC 504-44-990	Appendix A—Request for public records.
WAC 504-44-99001	Appendix B—Public records—Request for copies.
WAC 504-44-99002	Appendix C—Public records—Request for review.

#### **Chapter 504-45 WAC**

#### **PUBLIC RECORDS**

#### NEW SECTION

**WAC 504-45-010 Authority and purpose.** (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or

retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Washington State University will follow in order to provide full access to public records. Washington State University shall hereinafter be referred to as the "university." Where appropriate, the term university also refers to the staff and employees of Washington State University. These rules provide information to persons wishing to request access to public records of the university and establish processes for both requestors and university staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the university will be guided by the provisions of the act describing its purposes and interpretation.

#### NEW SECTION

**WAC 504-45-020 Agency description—Contact information—Public records officer.** (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The administrative offices of the university are located at the university's main campus at Pullman, Washington. Regional campuses are located in Spokane, Tri-Cities, and Vancouver, Washington. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver and Wenatchee, Washington. Cooperative extension offices are maintained in the county seats of all counties in the state. The Intercollegiate College of Nursing is located in Spokane, Washington. Learning Centers are located in Longview, Aberdeen, Goldendale, Wenatchee, Port Hadlock, Tacoma, Mt. Vernon, Yakima and Walla Walla, Washington. The university also has operations offices in Seattle and Olympia, Washington.

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request should contact the university's public records officer located at the Pullman administrative offices. Current contact information and additional information regarding release of public records can be found on the university web site at <http://www.wsu.edu>.

(3) The public records officer will oversee compliance with the act but another university staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the university will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

NEW SECTION**WAC 504-45-030 Availability of public records. (1)**

Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university will post links to many of these records on its web site at <http://www.wsu.edu>.

(3) Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization. A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site at [www.wsu.edu](http://www.wsu.edu). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university should make the request in writing on the university's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer to locate the records; and

(v) The date of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies will be provided at a rate of no more than fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on the university's web site at <http://www.wsu.edu>.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

**WAC 504-45-040 Processing of public records requests—General.** (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the

agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone, e-mail or mail. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of



the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee shall make any copies of records requested by the requestor or arrange for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the university has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional responsible documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

#### NEW SECTION

**WAC 504-45-050 Reserved.**

#### NEW SECTION

**WAC 504-45-060 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the university for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside the act. The university's failure to list an exemption here shall not affect the efficacy of any exemption.

(a) RCW 5.60.060—Privileged communications;

(b) 20 U.S.C. 1232g—Family Education Rights and Privacy Act (FERPA);

(c) 42 U.S.C. 405 (c)(2)(vii)(1)—Social Security numbers;

(d) 45 CFR 16-0164—HIPAA Privacy Rule;  
 (e) Chapter 19.108 RCW and RCW 4.24.601—Uniform Trade Secrets Act; and  
 (f) RCW 10.97—Regarding criminal history information.

(2) The university is prohibited by statute from providing lists of individuals for commercial purposes.

#### NEW SECTION

**WAC 504-45-070 Costs of providing copies of public records.** (1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying.

(2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.

(3) Payment. Payment may be made by cash, check or money order to the university.

#### NEW SECTION

**WAC 504-45-080 Review of denials of public records.** (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the vice-president for business affairs or designee. That person will immediately consider the petition and either affirm or reverse such denial within two business days following the university's receipt of the petition, or within such other time as the university and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

**WSR 07-04-029**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 29, 2007, 12:46 p.m., effective March 1, 2007]

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

Purpose: The purpose is to amend the rule to clarify the current process on how the department issues cash and Basic Food benefits, when the department cancels unused benefits, and when the department can replace cancelled benefits. The amended rule also removes a reference to an incorrect phone number.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 7 C.F.R. 274.12.

Adopted under notice filed as WSR 07-01-071 on December 18, 2006.

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

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

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

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

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

Date Adopted: January 26, 2007.

Jim Schnellman, Chief  
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 05-17-089, filed 8/12/05, effective 9/12/05)

**WAC 388-412-0025 How do I get my benefits?** (1) We send your cash benefits (~~are sent~~) to you by either:

(a) Electronic benefit transfer (EBT) (~~card~~), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A warrant(~~check~~) to a payee who is not approved for direct deposit; or

(d) A warrant(~~check~~) to you if you get:

(i) Diversion cash assistance (DCA) that cannot be paid directly to a vendor;

(ii) Additional requirements for emergent needs (AREN) that cannot be paid directly to a vendor;

(iii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor;

(iv) Clothing and personal incidentals (CPI) payments; or

(v) State supplemental payment (SSP) and you do not receive your benefit through EFT.

(2) (~~You use a Quest debit card to access your benefits in your EBT account. You get a personal identification number (PIN) that you must enter when using this card.~~) We send your Basic Food benefits to you by EBT.

(3) (~~Your Basic Food benefits are deposited into your EBT account on the day of the month defined in WAC 388-412-0020.~~) We set up an EBT account for the Head of Household of each AU that receives benefits by EBT.

(4) (~~We establish an EBT account for each AU that receives their benefits by EBT.~~) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.

(5) (~~We cancel your cash and Basic Food benefits when you do not use your EBT account for three hundred sixty-five days.~~

(a) ~~Basic Food benefits that were canceled because you did not use them for three hundred sixty-five days cannot be replaced.~~

(b) ~~Cash benefits that were canceled because you did not use them for three hundred sixty-five days may be replaced. You have two years to contact the department of revenue in order to replace your cash benefits. You can contact department of revenue at 1-888-328-9271. After that time, you must contact the state treasurer to claim any canceled funds.)~~ You must use your cash and Basic Food benefits from your EBT account. We do not convert cash or Basic Food benefits to checks.

(6) (~~You must use your cash and Basic Food benefits from your EBT account. We do not convert cash or Basic Food benefits to checks.~~) We deposit your Basic Food benefits into your EBT account by the tenth day of the month based on your Basic Food assistance unit number as described in WAC 388-412-0020.

(7) Unused EBT benefits: If you do not use your EBT account for three hundred sixty-five days, we cancel the cash and Basic Food benefits on your account.

(a) Replacing Basic Food benefits:

(i) We can replace cancelled benefits we deposited less than three hundred sixty-five days from the date you ask for us to replace your benefits.

(ii) We cannot replace cancelled benefits deposited three hundred sixty-five or more days from the date you ask us to replace your benefits.

(b) Replacing cash benefits: We can replace cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(8) Replacing cash warrants: If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(a) If we issued the benefits as a warrant one hundred sixty or fewer days ago, your local office can replace the warrant.

(b) If we issued the benefits as a warrant more than one hundred sixty days ago, the Office of Accounting Services can replace the warrant.

**WSR 07-04-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed January 29, 2007, 1:55 p.m., effective March 1, 2007]

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

Purpose: To provide compatibility with federal rules for Pacific Ocean fisheries and to ensure that proper catch accounting occurs for all commercially landed species.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010, 200-20-021, 220-69-230, 220-69-234, 220-69-240, 220-69-250, 220-69-254, and 220-69-280.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-19-029 on September 12, 2006.

Changes Other than Editing from Proposed to Adopted Version: The word "landed" was stricken from the proposed version of WAC 220-69-230 and 220-69-234 because its inclusion is not necessary. The initiation of a fish ticket is triggered by other rules and occurs when a transfer of custody takes place. These rules pertain to the information that is required, not when it is required. Also, "steelhead" was stricken from the proposed version of WAC 220-69-230 because steelhead is not legally harvested in nontreaty fisheries.

A final cost-benefit analysis is available by contacting Morris W. Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2944, e-mail barkemwb@dfw.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 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 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

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

Date Adopted: January 29, 2007.

J. P. Koenings  
Director

AMENDATORY SECTION (Amending Order 06-135, filed 6/13/06, effective 7/14/06)

**WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish.** (1) It shall be unlawful to take, fish for, possess or transport for any purpose fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) It shall be lawful to fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided; that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring (except as prescribed in WAC 220-49-020)	<i>(Clupea harengus pallasii)</i>
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Pilchard	<i>(Sardinops sagax)</i>

Except as provided for in WAC 220-88C-040

(4) It shall be unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed in a visible and legible manner the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the corkline of the net, on which shall be marked in a visible, legible and permanent manner the name and gill net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided; that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department, provided further that it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20' from August 15 through November 30 except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington or the Pacific Ocean for any purpose to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish whether taken within the jurisdiction of the state of Washington or beyond or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for or possess or to injure, kill or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, shoot with firearm, crossbow, bow and arrow or compressed air gun, snag, snare, dip net, harass, spear, stone or otherwise molest, injure, kill or destroy any fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) It shall be lawful to use a dip net or club in the landing of fish taken by personal-use angling unless otherwise provided and it shall be lawful to use a gaff in the landing of tuna, halibut and dogfish in all catch record card areas.

(b) It shall be lawful to use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the food fish or shellfish while sorting commercial catches during the act of discarding those fish that are not going to be retained.

(c) It shall be lawful to use a spear in underwater spear fishing as provided for in WAC 220-56-160.

(d) It shall be lawful to use a bow and arrow or spear to take carp as provided for in WAC 220-56-280.

(e) It shall be lawful to snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) It shall be lawful to shoot halibut when landing them with a dip net or gaff.

(12) It shall be unlawful to take or possess for any purpose any fish or shellfish smaller than the lawful minimum size limits. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish and it shall be unlawful to allow undersized salmon entangled in commercial nets to pass through a power block or onto a power reel or drum.

(13) It shall be unlawful to possess aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species and it is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

(14) It shall be lawful to possess, transport through the waters of the state, or land, dressed sablefish ("dressed" is defined by WAC 220-16-330).

(15) It shall be lawful to possess, transport through the waters of the Pacific Ocean, or land, dressed salmon caught during a lawful salmon troll fishery provided that frozen chinook salmon, dressed heads off, shall be 21 1/2 inches minimum and frozen coho salmon dressed heads off shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(16) It shall be lawful to possess, transport through the waters of the Pacific Ocean, or land, dressed halibut if allowed by IPHC rules and such fish meet any IPHC size requirements.

(17) It shall be unlawful in any area to use, operate or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

~~((15))~~ (18) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

~~((16))~~ (19) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

~~((17))~~ (20) It shall be unlawful to test commercial fishing gear except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts and south of the international boundary in waters 10 fathoms and deeper during times not under IPSFC control.

(c) San Juan Channel - within a 1 mile radius of Point Caution during times not under IPSFC control.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2 mile radius of the entrance to Everett breakwater in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe and Skiff Point to West Point in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland and from Dash Point to Point Piner in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Codends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

~~((18))~~ (21) It is unlawful for any person or corporation either licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

~~((19))~~ (22) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

~~((20))~~ (23) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

AMENDATORY SECTION (Amending Order 06-24, filed 2/14/06, effective 3/17/06)

**WAC 220-20-021 Sale of commercially caught sturgeon (~~and~~), bottomfish and halibut.** (1) It is unlawful for

any person while engaged in commercial fishing for sturgeon (~~(or)~~), bottomfish or halibut to:

(a) Keep sturgeon smaller or greater than the size limits provided for in WAC 220-20-020, keep more than one sturgeon for personal use, or keep more than the equivalent of one daily limit of sport caught bottomfish for personal use. Any lingcod to be retained for personal use taken east of the mouth of the Sekiu River must be greater than 26 inches in length and may not exceed 40 inches in length. All commercially taken sturgeon (~~and~~), bottomfish, and halibut retained for personal use must be recorded on fish receiving tickets.

(b) Sell any sturgeon (~~(or)~~), bottomfish, or halibut taken under such license to anyone other than a licensed wholesale dealer within or outside the state of Washington, except that a person who is licensed as a wholesale dealer under the provisions of RCW (~~(75-28-300)~~) 77.65.280 may sell to individuals or corporations other than licensed wholesale dealers.

(c) Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of any sturgeon taken under such license prior to the time that the sturgeon is sold under subsection (1)(b) of this section.

(2) It is unlawful for any wholesale dealer licensed under RCW 75.28.300 to purchase or attempt to purchase sturgeon eggs from sturgeon taken by any person licensed to take sturgeon for commercial purposes under chapter (~~(75-28)~~) 77.65 RCW if the sturgeon eggs have been removed from the body cavity of the sturgeon prior to the sale of the sturgeon.

(3) It is unlawful to purchase, sell, barter or attempt to purchase, sell, or barter any sturgeon eggs taken from sturgeon caught in the Columbia River below Bonneville Dam.

AMENDATORY SECTION (Amending Order 99-221, filed 12/20/99, effective 1/20/00)

**WAC 220-69-230 Description of Washington state nontreaty fish receiving tickets.** (1) There is hereby created the following nontreaty fish receiving ticket forms to be prepared, printed, and distributed upon request, by the department: Puget Sound salmon, troll, marine, utility, and shellfish. These forms shall contain space for the following information:

(a) Fisherman: Name of licensed deliverer.

(b) Address: Address of licensed deliverer.

(c) Boat name: Name or Coast Guard number of landing vessel.

(d) WDFW boat registration: Washington department of fish and wildlife boat registration number.

(e) Gear: Code number or name of specific type of gear used.

(f) Fisherman's signature: Signature of licensed deliverer.

(g) Date: Date of landing.

(h) Dealer: Name of dealer, and department number assigned to dealer.

(i) Buyer: Name of buyer, and department number assigned to buyer.

(j) Receiver's signature: Signature of original receiver.

(k) Number of days fished: Days spent catching fish.

(l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.

(m) Catch area: Salmon catch area code if salmon are caught. Marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.

(n) Tally space for dealer's use: Used at dealer's discretion.

(o) Species code: Department assigned species code.

(p) Individual number of ((fish, species description, pounds, and value)) salmon, sturgeon, number of ghost shrimp in dozens, number of oysters in dozens or gallons, species description for all fish and shellfish, original total weight in round pounds of all shellfish or fish, except pounds of legally dressed fish and shellfish may be recorded in original dressed weight. Dressed fish and shellfish must be designated as dressed on the fish receiving ticket. Value of fish and shellfish sold or purchased: Summary information for species, or species groups landed. All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).

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

(r) Total amount: Total value of landing.

(s) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

(t) Crew: Name and signature of crew members who take home fish.

(2) The Puget Sound salmon fish receiving ticket shall be used for:

(a) Deliveries of nontreaty salmon caught in inland waters.

(b) Any other delivery of nontreaty salmon where the catch may be easily recorded.

(c) Any imports of fresh salmon into the state of Washington.

(3) The troll fish receiving ticket shall be used for:

(a) Deliveries of nontreaty coastal salmon and incidental catch.

(b) Any other nontreaty deliveries where the species delivered may be easily recorded.

(c) Any imports of fresh salmon into the state of Washington.

(4) The marine fish receiving ticket shall be used for:

(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon.

(b) Any imports of fresh marine fish or bottomfish.

(5) The utility fish receiving ticket shall be used for:

(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate.

(b) Any imports of fresh fish or shellfish that do not include salmon.

(6) The shellfish receiving ticket shall be used for:

(a) Any nontreaty deliveries of shellfish.

(b) Any imports of fresh shellfish.

(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

AMENDATORY SECTION (Amending Order 99-221, filed 12/20/99, effective 1/20/00)

**WAC 220-69-234 Description of treaty Indian fish receiving ticket.** (1) There is hereby created a treaty Indian fish receiving ticket form to be prepared, printed, and distributed upon request, by the department, which shall contain space for the following information:

(a) Tribal name: Name or identification number of tribe.

(b) Fisherman: Name or identification number of deliverer.

(c) Signature: Signature of deliverer on tribal copy of ticket.

(d) Date: Date of landing.

(e) Dealer: Name of dealer, and department number assigned to dealer.

(f) Buyer: Name of buyer, and department number assigned to buyer.

(g) Gear: Code name or number of specific gear type used.

(h) Receiver's signature: Signature of original receiver.

(i) Catch area: River name for river catch, salmon catch area for saltwater salmon catch, marine fish/shellfish catch area for nonsalmon saltwater catch.

(j) Tally space for dealer's use: Used at dealer's discretion.

~~(k) ((Species and description: Species name of fish landed:~~

~~(l) Number of fish, pounds, and value: Information for each species landed:~~

~~(m) Subtotal: Total price of catch landed:~~

~~((n)) Individual number of salmon, steelhead, sturgeon, number of ghost shrimp in dozens, number of oysters in dozens or gallons, species description for all fish and shellfish, original total weight for each species or species group in round pounds, except pounds of legally dressed fish and shellfish may be recorded in original dressed weight. Dressed fish and shellfish must be designated as dressed. Value of fish and shellfish purchased. Summary information for species, or species group landed. All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).~~

~~(l) Tribal tax: Tribal tax collected.~~

~~((o) Total: Total price paid seller or deliverer.~~

~~((p)) (m) Take-home fish: Species, number, and pounds of fish retained for personal, ceremonial, or subsistence use.~~

(2) The treaty Indian fish receiving ticket shall be used for any deliveries of fish or shellfish caught by Washington treaty Indians.

AMENDATORY SECTION (Amending Order 06-59, filed 4/3/06, effective 5/4/06)

**WAC 220-69-240 Duties of commercial purchasers and receivers.** (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appro-

priate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket.

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

(3) It is unlawful for any original receiver of crab or spot shrimp to fail to record all crab or spot shrimp aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weighbacks must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish.

(a) Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(b) Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

~~((2))~~ (4) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name.

~~((3))~~ (5) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed is required to be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.

~~((4))~~ (6) Forage fish: It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets that are initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish is to be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate." In the coastal pilchard fishery, the amount of pilchards, by weight, purchased for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait must be included on the fish ticket as "reduction."

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

~~((5))~~ (7) Geoduck: It is unlawful for any person receiving geoducks, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately

and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

~~((6))~~ (8) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

~~((7))~~ (9) Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension 800, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

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

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

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

(d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051.

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

~~((8))~~ (10) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension 600, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~((9))~~ (11) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the La Conner District Office by facsimile 360-466-0515 or by telephone number 1-866-859-8439 extension 500 and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by nontreaty fishers by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~((10))~~ (12) Salmon and sturgeon: During any fishery opening designated by rule as "quick reporting required," it is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement holder to fail to report all salmon offered for retail sale on the previous calendar day. The report must include dealer or holder name and purchasing location, date of purchase, each fish ticket number used on the purchasing date, and the following catch data for each species purchased: Gear, catch area, species, number and total weight of fish. When quick reporting is required, it is unlawful to fail to comply with the following reporting requirements:

(a) Puget Sound reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to psfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(b) Coastal troll reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to trollfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(c) Grays Harbor and Willapa Bay reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-664-0689
- (ii) E-mail to harborfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1280
- (d) Columbia River reports must be reported by 10:00 a.m. on the day after the purchase date by either:
  - (i) Fax transmission to 360-906-6776 or 360-906-6777
  - (ii) E-mail to crfishtickets@dfw.wa.gov or
  - (iii) Telephone to 1-866-791-1281
- (e) Faxing a copy of each fish receiving ticket used on the previous day satisfies the reporting requirement.
- (f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~((11))~~ (13) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by facsimile (fax) transmission to 360-902-2943 or by toll-free telephone to 866-207-8223. Additionally, it is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore. Additionally, it is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained." Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~((12))~~ (14) Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.-640.

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

**WAC 220-69-250 Required information on nontreaty fish receiving tickets.** (1) It is unlawful for a person required to complete a nontreaty fish receiving ticket to fail to enter the mandatory information (~~required~~) referenced in WAC 220-69-230 (1)(a) through (m), (p), (s), and (t) on each nontreaty fish receiving ticket.

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

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



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

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

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

**WAC 220-69-254 Required information on treaty Indian fish receiving tickets.** (1) It is unlawful for a person required to complete a treaty Indian fish receiving ticket to fail to enter the mandatory information ((required)) referenced in WAC 220-69-234 (1)(a) through (l) and (p) on each treaty Indian fish receiving ticket.

(2) A valid treaty Indian identification card may be used in lieu of WAC 220-69-234 (1)(a) and (b).

(3) A valid dealer or buyer card issued by the department shall be used in lieu of WAC 220-69-234 (1)(e) and (f).

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

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

**WAC 220-69-280 Fish receiving ticket accountability.** Only current state of Washington fish receiving tickets shall be used, and shall be subject to the following orders:

(1) Official state of Washington fish receiving tickets may be ordered free of charge from the department.

(2) It is unlawful to fail to use fish receiving ticket books and fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued to the original receiver.

(3) It is unlawful to transfer fish receiving tickets or ticket books from one original receiver to another original receiver without written permission from the department.

(4) It is unlawful for any purchaser or receiver terminating business to fail to notify the department in writing and to fail to return all unused fish receiving tickets and ticket books to the department within thirty days after termination of business.

(5) It is unlawful to fail to return the state copy of all fish receiving tickets to the state. All fish receiving tickets that are incorrectly made out, voided, or otherwise unused, are required to be submitted to the department accompanying, and in sequence with, other fish receiving tickets.

(6) It is unlawful to fail to account for all fish receiving tickets that are lost, destroyed, or otherwise missing in writing to the department.

(7) It is unlawful to transfer fish receiving tickets to anyone who is not a licensed wholesale fish dealer, licensed fish buyer, or holder of a direct retail sale license endorsement, and it is unlawful for any person not so licensed to have fish receiving tickets in possession.

(8) It is unlawful for a wholesale dealer or holder of a direct retail sale endorsement to fail to maintain the dealer

copy or copies at the dealer's or holder's regular place of business for ~~((one))~~ three years after the date of use of the fish ticket.

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

## WSR 07-04-036

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 29, 2007, 2:57 p.m., effective March 1, 2007]

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

Purpose: HRSA has added language to new WAC 388-501-0070 stating that a client has the right to request a fair hearing when denied a noncovered service by the department. The language was added to address a commenter's concern about the removal of a sentence in WAC 388-543-1300(3) that related to a client's right to request a fair hearing in the event the client's request for a noncovered service is denied. No changes were made to WAC 388-543-1300. These rules were originally proposed under WSR 06-19-098 and 06-19-100.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1300.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700.

Adopted under notice filed as WSR 06-23-124 on November 21, 2006.

Changes Other than Editing from Proposed to Adopted Version: The entire wording in subsection (7) of WAC 388-501-0070 has been struck: ~~If a client's eligibility for medical assistance is newly established and the client had been receiving a service prior to becoming eligible that is not covered by the department, and the client requests a hearing, the department will not pay for the service pending the outcome of the hearing.~~

A final cost-benefit analysis is available by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail [sullikm@dshs.wa.gov](mailto:sullikm@dshs.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 0, Repealed 0.

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

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

Date Adopted: January 29, 2007.

Robin Arnold-Williams  
Secretary

NEW SECTION

**WAC 388-501-0070 Healthcare coverage - noncovered services.** (1) The department does not pay for any service, treatment, equipment, drug or supply not listed or referred to as a covered service in WAC 388-501-0060, regardless of medical necessity. Circumstances under which clients are responsible for payment of services are described in WAC 388-502-0160.

(2) This section does not apply to services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in chapter 388-534 WAC.

(3) The department does not pay for any ancillary service(s) provided in association with a noncovered service.

(4) The following list of noncovered services is not intended to be exhaustive. Noncovered services include, but are not limited to:

(a) Any service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related services and supplies, not specifically allowed under WAC 388-531-0100(4).

(e) Ear or other body piercing;

(f) Face lifts or other facial cosmetic enhancements;

(g) Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related services, supplies, or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(h) Hair transplants, epilation (hair removal), and electrolysis;

(i) Fertility, infertility or sexual dysfunction testing, care, drugs, and treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(j) Marital counseling;

(k) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(l) Nonmedical equipment;

(m) Penile implants;

(n) Prosthetic testicles;

(o) Psychiatric sleep therapy;

(p) Subcutaneous injection filling;

(q) Tattoo removal;

(r) Transport of Involuntary Treatment ACT (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities; and

(s) Vehicle purchase - new or used vehicle.

(5) For a specific listing of noncovered services in the following service categories, refer to the accompanying WAC citation:

(a) Ambulance transportation as described in WAC 388-546-0250;

(b) Dental services (for clients twenty-one years of age and younger) as described in Chapter 388-535 WAC;

(c) Dental services (for clients twenty-one years of age and older) as described in Chapter 388-535 WAC;

(d) Durable medical equipment as described in WAC 388-543-1300;

(e) Hearing care services as described in WAC 388-544-1400;

(f) Home health services as described in WAC 388-551-2130;

(g) Hospital services as described in WAC 388-550-1600;

(h) Physician-related services as described in WAC 388-531-0150;

(i) Prescription drugs as described in WAC 388-530-1150; and

(j) Vision care services as described in WAC 388-544-0475.

(6) A client has a right to request an administrative hearing when a service is denied as noncovered. When the department denies all or part of a request for a noncovered service(s) or equipment, the department sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the department intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the department's action was taken; and

(ii) Prepare a response to the department's decision to classify the requested service as noncovered.

(d) The specific factual basis for the intended action;

(e) The following information:

(i) The client's administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgement that a client may be represented at the hearing by legal counsel or other representative;

(iv) Upon the client's request, the name and address of the nearest legal services office;

(v) Instructions on how to request an exception to rule (ETR); and

(vi) Information regarding department-covered services, if any, as an alternative to the requested noncovered service.

(7) A client can request an ETR as described in WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 02-16-054, filed 8/1/02, effective 9/1/02)

**WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.** (1) ~~((MAA))~~ The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) ~~((MAA))~~ The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS), formerly known as HCFA, that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) ~~((MAA))~~ The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services ~~((and non-covered equipment, related supplies and services, supplies and devices,))~~ under the provisions of WAC 388-501-0165. ~~((When MAA considers that a request does not meet the requirement for medical necessity, the definition(s) of covered item(s), or is not covered, the client may appeal that decision under the provisions of WAC 388-501-0165.))~~

(4) ~~((MAA))~~ The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the Medicare programs for qualified Medicare beneficiaries; or
- (d) Requested for a child who is eligible for services under the EPSDT program. ~~((MAA))~~ The department reviews these requests according to the provisions of chapter 388-534 WAC.

~~((5))~~ (6) Excluded services and equipment include, but are not limited to:

- (a) Services, procedures, treatment, devices, drugs, or the application of associated services that the ~~((department of the))~~ Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS) ~~((, formerly known as the Health Care Financing Administration (HCFA)))~~ consider investigative or experimental on the date the services are provided;
- (b) Any service specifically excluded by statute;
- (c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by ~~((MAA))~~ the department for the client contributes to an increased utility bill (refer to the aging and ~~((adult))~~ disability services administration's ~~((AASA))~~ (ADSA) COPEs program for potential coverage);
- (d) Hairpieces or wigs;

(e) Material or services covered under manufacturers' warranties;

(f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;

(h) Prosthetic devices dispensed solely for cosmetic reasons (refer to WAC 388-531-0150 (1)(d));

(i) Home improvements and structural modifications, including but not limited to the following:

- (i) Automatic door openers for the house or garage;
- (ii) Saunas;
- (iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;
- (iv) Swimming pools;
- (v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or
- (vi) Electrical rewiring for any reason;
- (vii) Elevator systems and elevators; and
- (viii) Lifts or ramps for the home; or
- (ix) Installation of bathtubs or shower stalls.

(j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

- (i) Back-packs, pouches, bags, baskets, or other carrying containers;
- (ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);
- (iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;

(iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(A) Devices intended for amplifying voices (e.g., microphones);

(B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ~~((AASA))~~ (ADSA) COPEs or outpatient hospital programs for emergency response systems and services);

(C) Two-way radios; and

(D) Rental of related equipment or services;

(vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads;

(viii) Ergonomic equipment;

(ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;

(x) Generators;

(xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;

(xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

(xiv) Racing strollers/wheelchairs and purely recreational equipment;

(xv) Room fresheners/deodorizers;

(xvi) Bidet or hygiene systems, paraffin bath units, and shampoo rings;

(xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).

(k) Personal and **comfort items** that do not meet the DME definition, including but not limited to the following:

(i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers and sheets;

(iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, and socks;

(v) Clothing protectors and other protective cloth furniture coverings;

(vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(vii) Diverter valves for bathtub;

(viii) Eating/feeding utensils;

(ix) Emesis basins, enema bags, and diaper wipes;

(x) Health club memberships;

(xi) Hot or cold temperature food and drink containers/holders;

(xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(xiii) Impotence devices;

(xiv) Insect repellants;

(xv) Massage equipment;

(xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;

(xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(xviii) Page turners;

(xix) Radio and television;

(xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and

(xxi) Toothettes and toothbrushes, waterpics, and periodontal devices whether manual, battery-operated, or electric.

(l) Certain wheelchair features and options are not considered by ~~((MAA))~~ the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:

(i) Attendant controls (remote control devices);

(ii) Canopies, including those for strollers and other equipment;

(iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);

(iv) Identification devices (such as labels, license plates, name plates);

(v) Lighting systems;

(vi) Speed conversion kits; and

(vii) Tie-down restraints, except where medically necessary for client-owned vehicles.

### WSR 07-04-039

#### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed January 30, 2007, 10:29 a.m., effective March 2, 2007]

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

Purpose: To provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, RCW 42.56.040 through 42.26.570 [42.56.570]. The model rules will establish a culture of compliance among agencies and culture of cooperation among requestors by standardizing best practices throughout the state. The WSP WAC rules are outdated and in an effort to comply with the wishes of the 2005 legislature we wish to modify them to more closely resemble the attorney general model rules, and update agency rules regarding disclosure of public records.

Citation of Existing Rules Affected by this Order: Repealing WAC 446-10-020, 446-10-060, 446-10-070, 446-10-120, 446-10-130, 446-10-140 and 446-10-150; and amending WAC 446-10-010, 446-10-030, 446-10-050, 446-10-080, 446-10-090, 446-10-100, and 446-10-110.

Statutory Authority for Adoption: RCW 42.56.040 through 46.56.570 [42.56.570].

Adopted under notice filed as WSR 06-24-046 on December 1, 2006.

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 7, Repealed 7.

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

Date Adopted: January 29, 2007.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

**WAC 446-10-010 Authority and purpose.** ~~((The purpose of this chapter shall be to ensure compliance by the Washington state patrol with the provisions of chapter 1, Laws of 1973 (Initiative 276) [chapter 42.17 RCW], Disclosure Campaign finances Lobbying Records; and in particular with subsections 25-32 of that act, dealing with public records.)) (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the act), that exempts or prohibits the disclosure of public records held by that agency.~~

(2) The purpose of these rules is to establish the procedures the Washington state patrol shall follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state patrol and establish processes for both requestors and Washington state patrol staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the Washington state patrol shall be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 95-24-041, filed 11/30/95, effective 12/31/95)

**WAC 446-10-030 Description of central and field organizations of the Washington state patrol.** ~~(1) The Washington state patrol is a law enforcement agency ((and service)). The ((administrative offices of the department and its staff are located)) Washington state patrol is headquartered in the General Administration Building, 210 - 11th Avenue S.W., Olympia, Washington 98504. The department has eight district headquarters with working addresses as follows:~~

- |          |     |  |
|----------|-----|--|
| District | I   | - 2502 112th Street East, Tacoma<br>98445-5104 |
| District | II  | - 2803 - 156th Avenue S. E., Bellevue<br>98007 |
| District | III | - 2715 Rudkin Road, Union Gap<br>98903         |

- |          |      |  |
|----------|------|--|
| District | IV   | - West 6403 Rowand Road, Spokane<br>99204-5300   |
| District | V    | - <del>((605 East Evergreen Boulevard,<br/>Vancouver 98661-3812))</del><br><u>11018 N.E. 51st Circle, Vancouver<br/>98682-3812</u> |
| District | VI   | - 2822 Euclid Avenue, Wenatchee<br>98801-5916  |
| District | VII  | - 2700 116th Street N.E., Marysville<br>98271-9425   |
| District | VIII | - 4811 Werner Road, Bremerton<br>98312-3333  |

(2) Any person wishing to request access to public records of the Washington state patrol, or seeking assistance in making such a request, shall contact the public records officer of the Washington state patrol:

Public Records Officer  
Washington State Patrol  
P.O. Box 42631  
Olympia, WA 98504  
Phone: 360-753-5467  
Fax: 360-753-0234  
E-mail: pubrecs@wsp.wa.gov

Information is also available at the Washington state patrol's web site at <http://www.wsp.wa.gov/>.

(3) The public records officer shall oversee compliance with the act, but another Washington state patrol staff member may process the request. Therefore, these rules shall refer to the public records officer "or designee." The public records officer or designee and the Washington state patrol shall provide the "fullest assistance" to requestors: create and maintain for use by the public and Washington state patrol officials an index to public records of the Washington state patrol; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington state patrol.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

**WAC 446-10-050 Availability of public records ((available)).** ~~((All public records of the department, as defined in WAC 446-10-020(1), are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, and WAC 446-10-100.)) (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the Washington state patrol; 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Records must be inspected at the offices of the Washington state patrol.~~

(2) **Records index.** An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state patrol, a current list of laws, other than those listed in chapter 42.56

RCW, that exempts or prohibits disclosure of specific information or records, and current *Washington Administrative Code* agency rules. The index may be accessed on-line at [www.wsp.wa.gov/](http://www.wsp.wa.gov/), or at any public Washington state patrol office.

**(3) Organization of records.** The Washington state patrol shall maintain its records in a reasonably organized manner. The Washington state patrol shall take reasonable actions to protect records from damage and disorganization. A requestor shall not take Washington state patrol records from Washington state patrol offices without the permission of the public records officer or designee. Records may be available on the Washington state patrol web site at [www.wsp.wa.gov/](http://www.wsp.wa.gov/). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

**(4) Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the Washington state patrol shall make the request in writing using the Washington state patrol request form, or by letter, fax, or e-mail addressed to the public records officer. Each request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and/or any e-mail address; and
- Identification of the public records adequate for the public records officer or designee to locate the records.

(b) If the requestor wishes to inspect rather than obtain copies of records, they shall indicate this preference in their request. Pursuant to WAC 446-10-090, standard photocopies shall be provided at fifteen cents per page, plus postage.

(c) A form is available for use by requestors on-line at [www.wsp.wa.gov/](http://www.wsp.wa.gov/).

**AMENDATORY SECTION** (Amending Order 79-2, filed 3/23/79)

**WAC 446-10-080 Processing of requests for public records.** ((In accordance with requirements of chapter 1, Laws of 1973 [chapter 42.17 RCW], that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, a request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in an appropriately identifying the public record requested. (1) **Providing "fullest assistance."** The Washington state patrol is charged by statute with adopting rules which provide for how it shall "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee shall process requests in the order they are received and allowing for the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee shall do one or more of the following:

(a) Make the records available for inspection;

(b) Provide the requested records (or provide a bill for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records shall be available; or

(d) Deny the request, and providing a statutory explanation as to the reason for the denial.

(3) **Consequences of failure to respond.** If the Washington state patrol does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. This notice is given so affected persons may seek an order from a court to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the Washington state patrol believes that a record is exempt from disclosure and should be withheld, the public records officer or designee shall state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee shall redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

**(6) Inspection of records.**

(a) Consistent with other demands, the Washington state patrol shall provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document without approval from the public records officer or designee. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the Washington state patrol's notification to him or her that the records are available for inspection or copying. The agency shall notify the requestor in writing of this requirement and inform the requestor that he or she is to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington state patrol may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which may be processed as a new request.

(7) Providing copies of records. After inspection is complete or in lieu of inspection, the public records officer or designee shall make the requested copies or arrange for copying and provide them to the requestor.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical to provide the records in that way. If, within thirty days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee shall indicate that the Washington state patrol has completed the request and provided all available (nonexempt) records.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer shall close the request and indicate to the requestor that the Washington state patrol has closed the request.

(11) Later discovered documents. If, after the Washington state patrol has informed the requestor that it has provided all available records, the Washington state patrol becomes aware of additional responsive documents existing at the time of the request, it shall promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 97-01-018, filed 12/9/96, effective 1/9/97)

**WAC 446-10-090 ((Charge)) Costs for providing copies of public records.** ((No fee shall be charged for the inspection of public records. The department shall charge a

fee of fifteen cents per page of copy for providing copies of written public records and for use of the department copy and duplicating equipment, and actual costs for postage, mailing and shipping services. The department may charge the actual cost for providing copies of public records, including duplications of photographs, audio tapes, video tapes, diagrams and/or drawings of collision scenes. These charges are the amounts necessary to reimburse the department for its actual costs incident to such copying and mailing.

Payment for the copying of public records may be required by the department prior to the release of the documents to the requester. Only company checks, money orders, or personal checks will be accepted as payment. No cash shall be allowed.)) (1) **Costs for paper copies.** There is no fee charged for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington state patrol shall not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be the actual cost of the CD, DVD, audio or video tape, or disc.

(3) **Costs of mailing.** The Washington state patrol may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by check or money order only, payable to the Washington state patrol.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

**WAC 446-10-100 Exemptions.** ((1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 446-10-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973 [chapter 42.17 RCW].

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973 [chapter 42.17 RCW], the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosures of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973 [chapter 42.17 RCW]. The public records officer will fully justify such deletion in writing.

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

(1) The Public Records Act, chapter 42.56 RCW, provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits

disclosure. A list of statutes containing exemptions, outside the Public Records Act, that restrict the availability of some documents held by Washington state patrol for inspection and copying can be found in the Washington state patrol public records index which is available on-line at www.wsp.wa.gov/ or at any Washington state patrol public office.

(2) The Washington state patrol is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

**WAC 446-10-110 Review of denials of public records ((requests)).** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The ~~((written request))~~ petition shall ((specifically refer to)) include a copy of, or reasonably identify, the written statement by the public records officer or ((other staff member which constituted or accompanied the denial)) designee denying the request.

(2) ~~((Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief of the department. The chief shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the department as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.))~~ **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the chief or designee. The chief or designee shall immediately consider the petition and either affirm or reverse the denial within two business days following the Washington state patrol's receipt of the petition, or within such other time as the Washington state patrol and the requestor mutually agree upon.

(3) ~~((Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.))~~ **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the Washington state patrol denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative approval.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-10-020 Definitions.

WAC 446-10-060	Public records officer.
WAC 446-10-070	Office hours.
WAC 446-10-120	Protection of public records.
WAC 446-10-130	Records index.
WAC 446-10-140	Request for information.
WAC 446-10-150	Adoption of form.

#### **WSR 07-04-042**

#### **PERMANENT RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 30, 2007, 3:53 p.m., effective March 2, 2007]

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

Purpose: The purpose of new sections WAC 388-105-0050 and 388-105-0055 is to make it clear when an AFH, AL, ARC or EARC contractor may request an additional payment from a Medicaid client or from a third party on behalf of a Medicaid client.

The anticipated effect is to prevent a Medicaid recipient from paying for services, items, activities, or room and board covered by the Medicaid rate and required to be provided by the contractor. Also, to prevent supplementation of the Medicaid rate, whereby, a contractor requires a payment unrelated to a service, item, activity, or room and board from the Medicaid client in order for the client to reside in the facility.

Statutory Authority for Adoption: RCW 74.39A.901.

Adopted under notice filed as WSR 06-24-065 on December 4, 2006.

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 2, 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 0, Repealed 0.

Date Adopted: January 26, 2007.

Jim Schnellman, Chief  
Office of Administrative Resources

#### NEW SECTION

**WAC 388-105-0050 Supplementation—General requirements.** (1) Supplementation of the Medicaid daily payment rate is an additional payment requested from a Medicaid recipient or a third-party payer by an Adult Family



Home (AFH) contractor or a licensed boarding home contractor with a contract to provide Adult Residential Care (ARC), Enhanced Adult Residential Care (EARC), or Assisted Living (AL) services.

(2) The AFH, ARC, EARC, or AL contractor may not request supplemental payment of a Medicaid recipient's daily rate for services or items that are covered in the daily rate, and the contractor is required to provide:

(a) Under licensing chapters 388-76 or 78A WAC and chapter 388-110 WAC; and/or

(b) In accordance with his or her contract with the department.

(3) Before a contractor may request supplemental payments, the contractor must have a supplemental payment policy that has been given to all applicants for admittance and current residents. In the policy, the contractor must inform the applicant for admittance or current resident that:

(a) The department Medicaid payment plus any client participation assigned by the department is payment in full for the services, items, activities, room and board required by the resident's negotiated service plan per chapter 388-78A WAC or the negotiated care plan per chapter 388-76 WAC and its contract with the department; and

(b) Additional payments requested by the contractor are for services, items, activities, room and board not covered by the Medicaid per diem rate.

(4) For services, items and activities, the supplementation policy must comply with RCW 70.129.030(4).

(5) For units or bedrooms for which the contractor may request supplemental payments, the contractor must include in the supplemental payment policy the:

(a) Units and/or bedrooms for which the contractor may request supplementation;

(b) Action the contractor will take when a private pay resident converts to Medicaid and the resident or a third party is unwilling or unable to pay a supplemental payment in order for the resident to remain in his or her unit or bedroom. When the only units or bedrooms available are those for which the contractor charges a supplemental payment, the contractor's policy may require the Medicaid resident to move from the facility. However, the contractor must give the Medicaid resident thirty days notice before requiring the Medicaid resident to move.

(6) For the Medicaid resident for whom the contractor receives supplemental payments, the contractor must indicate in the resident's record the:

(a) Unit or bedroom for which the contractor is receiving a supplemental payment;

(b) Services, items, or activities for which the contractor is receiving supplemental payments;

(c) Who is making the supplemental payments;

(d) Amount of the supplemental payments; and

(e) Private pay charge for the unit or bedroom for which the contractor is receiving a supplemental payment.

(7) When the contractor receives supplemental payment for a unit or bedroom, the contractor must notify the Medicaid resident's case manager of the supplemental payment.

#### NEW SECTION

**WAC 388-105-0055 Supplementation—Unit or bedroom.** When the AFH, ARC, EARC, or AL contractor only has one type of unit or all private bedrooms, the contractor may not request supplementation from the Medicaid applicant/resident or a third party, unless the unit or private bedroom has an amenity that some or all of the other units or private bedrooms lack e.g., a bathroom in private bedroom, a view unit, etc.

#### **WSR 07-04-046**

#### **PERMANENT RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed January 31, 2007, 1:22 p.m., effective March 3, 2007]

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

Purpose: The changes are being made as required under E2SHB 3098.

Citation of Existing Rules Affected by this Order: Amending chapter 392-500 WAC.

Statutory Authority for Adoption: RCW 28A.04.120, 28A.31.118.

Adopted under notice filed as WSR 06-20-134 on October 4, 2006.

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

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

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

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

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

Date Adopted: January 31, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-500-015 Pupil tests and records—Authority.** Pursuant to authority under provisions of RCW 28A.305.130, the ~~((state board of education))~~ office of superintendent of public instruction, hereby prescribes the rules and regulations relating to pupil tests and records hereinafter in WAC ~~((480-52-020, 180-52-025, 180-52-030 and 180-52-035))~~ 392-500-020, 392-500-025, 392-500-030 and 392-500-035 set forth.

**WSR 07-04-047**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 31, 2007, 1:24 p.m., effective March 3, 2007]

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

Purpose: The changes are being made as required under E2SHB 3098.

Citation of Existing Rules Affected by this Order: Amending chapter 392-410 WAC.

Statutory Authority for Adoption: RCW 28A.230.090.

Adopted under notice filed as WSR 06-20-133 on October 4, 2006.

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

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

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

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

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

Date Adopted: January 31, 2007.

Dr. Terry Bergeson  
 Superintendent of  
 Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-410-100 Authority and purpose.** (1) The general authority for this chapter is RCW ~~((28A.305.130(8)))~~ 28A.230.020 which authorizes the ~~((state board of education))~~ superintendent of public instruction to prepare an outline of study for the common schools and ~~((RCW 28A.305.130(9) which authorizes the state board of education))~~ to adopt rules to meet the educational needs of students. Where applicable, specific statutory authority is cited within sections of this chapter.

(2) The purposes of this chapter are to:

(a) Implement RCW ~~((28A.305.130 (8) and (9)))~~ 28A.230.020 by prescribing state requirements for a course of study in the common schools;

(b) Implement courses of study specifically required by statutes;

(c) ~~((Establish))~~ Implement RCW 28A.230.100 establishing procedural and substantive requirements for the granting of credit for equivalent courses of study which may be in conjunction with or as a substitution for courses of study in common schools.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-410-115 Mandatory areas of study in the common school.** (1) Pursuant to RCW 28A.230.020 all school districts shall provide instruction in reading, penmanship, spelling, mathematics, geography, English grammar, physiology, hygiene, and history of the United States.

(2) Pursuant to RCW 28A.230.030, unless instruction in a language other than English will aid the educational advancement of the student, all students shall be taught in English.

(3) Pursuant to RCW 28A.230.130~~((, after July 1, 1986,))~~ each school district offering a high school program shall provide a course of study which includes the preparation for uniform college and university entrance requirements ~~((as published by the council of postsecondary education)).~~

(4) In addition to the requirements in the above subsections, each such school district shall offer all required courses for a high school diploma as provided in chapter 180-51 WAC and shall provide an opportunity for high school students to take at least one course in the following areas of study:

- (a) Art;
- (b) Career education;
- (c) Computer education;
- (d) Consumer education;
- (e) Economics;
- (f) A language other than English which may include American Indian languages;
- (g) Health education;
- (h) Home and family life;
- (i) Music;
- (j) Remedial education, including at least, remedial education in reading, language arts, and mathematics.

(5) Districts shall make available to all high school students enrolled therein the areas of study enumerated above either within the district or by alternative means which shall include equivalent education programs set forth in this chapter, interdistrict cooperative programs as permitted by RCW 28A.225.220, and/or the full-time or part-time release of such students to attend nonresident districts pursuant to chapter 392-137 WAC.

(6) Pursuant to RCW 28A.230.020 instruction about conservation, natural resources, and the environment shall be provided at all grade levels in an interdisciplinary manner through science, the social studies, the humanities, and other appropriate areas with an emphasis on solving the problems of human adaptation to the environment.

**WSR 07-04-048**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 31, 2007, 1:26 p.m., effective March 3, 2007]

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

Purpose: The changes are being made as required under E2SHB 3098.

Citation of Existing Rules Affected by this Order:  
Amending chapter 392-400 WAC.

Statutory Authority for Adoption: RCW 28A.305.160.

Adopted under notice filed as WSR 06-20-132 on October 4, 2006.

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

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

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

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

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

Date Adopted: January 31, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-200 Purpose and application.** The purpose of this chapter is to implement RCW ((~~28A.305.160~~) 28A.600.015) by prescribing the substantive and procedural due process rights of students served by any program or activity conducted by or in behalf of a common school district: Provided, That the enforcement of rules promulgated by the Washington interscholastic activity association and like organizations that govern the participation of students in interschool activities, and appeals in connection therewith, shall be governed by rules of the organization that have been adopted pursuant to RCW 28A.600.200 ((~~and approved by the state board of education not by this chapter~~)). The procedures and standards set forth in this chapter and those adopted by a school district in conformance with this chapter shall govern the imposition of corrective action or punishment (i.e., discipline, suspension, and expulsion) upon any student by a school district and its agents.

The provisions of this chapter are intended to establish the minimum procedural and substantive due process rights of students. School districts are free to establish additional due process requirements and limitations and shall do so as necessary to accommodate the constitutional rights of students as now or hereafter established.

For rules regarding student conduct which supplement this chapter see chapter 392-145 WAC governing the operation of school buses, particularly WAC 392-145-015(4) regarding the responsibility of bus drivers and certificated staff members who accompany students for the behavior of students, and WAC 392-145-035 regarding the duty to adopt and post rules, including rules of conduct, governing school bus passengers.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-210 Student responsibilities and duties.** The mission of the common school system is to provide learning experience which will assist all students to develop skills, competencies, and attitudes that are fundamental to an individual's achievement as a responsible, contributing citizen. In order to maintain and advance this mission, it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC ((~~180-40-225~~) 392-400-225) and RCW 28A.600.010, and submit to reasonable corrective action or punishment imposed by a school district and its agents for violation(s) of such rules. The provisions of this chapter do not lessen the foregoing responsibilities and duties of each student. This chapter is intended to assure that corrective action or punishment is imposed for just cause and in a fair and just manner.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-227 School district rules defining students religious rights.** It shall be the responsibility and duty of each school district to adopt policies of the district for implementation of students' rights to freedom of religion and to have their schools free from sectarian control or influence while they are participating in any school district conducted or sponsored activity or while they are otherwise subject to school district supervision and control. Such rules shall be adopted ((~~by December 1, 1985~~)) and ((~~shall be~~)) transmitted to the superintendent of public instruction ((~~by December 10, 1985~~)).

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-230 Persons authorized to impose discipline, suspension, expulsion, or emergency removal upon students.** (1) Each certificated teacher, each school administrator, each school bus driver, and any other school employee designated by the board of directors of a school district shall possess the authority to impose discipline upon a student for misconduct which violates rules of the school district established pursuant to WAC ((~~180-40-225~~) 392-400-225) and to impose an emergency removal from a class, subject, or activity upon a student pursuant to WAC ((~~180-40-290~~) 392-400-290).

(2) The board of directors of any school district may delegate to the superintendent and/or his or her designee(s) the authority to impose suspensions and expulsions upon students for misconduct which violates rules of the school district established pursuant to WAC ((~~180-40-225~~) 392-400-225). Each certificated teacher and each administrator shall possess the authority to recommend suspensions and expulsions for such misconduct.

(3) Any board of directors which chooses not to delegate the authority to impose suspensions and/or expulsions, nev-

ertheless, shall be subject to the requirements set forth in this chapter when it imposes a suspension or expulsion.

(4) Notwithstanding any provision of this section to the contrary, each teacher is empowered to exclude any student who creates a disruption of the educational process in violation of the building disciplinary standards while under the teacher's immediate supervision from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day or until the principal or designee and teacher have conferred, whichever occurs first: Provided, That except in emergency circumstances as provided for in WAC ((180-40-290)) 392-400-290, the teacher shall have first attempted one or more alternative forms of corrective action: Provided further, That in no event without the consent of the teacher shall an excluded student be returned during the balance of the particular class or activity period from which the student was initially excluded.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-235 Discipline—Conditions and limitations.** Discipline may be imposed upon any student for violation of the rules of the school district that have been established pursuant to WAC ((180-40-225)) 180-400-225, subject to the following limitations and conditions and the grievance procedure set forth in WAC ((180-40-240)) 392-400-240:

(1) No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements.

(2) A student's academic grade or credit in a particular subject or course may be adversely affected by reason of tardiness or absences only to the extent and upon the basis that:

(a) The student's attendance and/or participation is related to the instructional objectives or goals of the particular subject or course, and

(b) The student's attendance and/or participation has been identified by the teacher pursuant to policy of the school district as a basis for grading, in whole or in part, in the particular subject or course.

(3) Corporal punishment which is defined as any act which willfully inflicts or willfully causes the infliction of physical pain on a student is prohibited. ((This prohibition shall take effect in all school districts September 1, 1994.))

Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school employee or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students and school staff or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student;

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects; or

(d) Physical restraint or the use of aversive therapy as part of a behavior management program in a student's individual education program which has been signed by the par-

ent and is carried out according to district procedures in compliance with WAC 392-171-800, et seq.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-240 Discipline—Grievance procedure.** Any student, parent, or guardian who is aggrieved by the imposition of discipline shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the superintendent of the district or his/her designee. If the grievance is not resolved, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC ((180-40-317)) 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The discipline action shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-245 Short-term suspension—Conditions and limitations.** A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC ((180-40-225)) 392-400-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC ((180-40-250)) 392-400-250, and the grievance procedures set forth in WAC ((180-40-255)) 392-400-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) short-term suspension is not established as the corrective action or punishment for a student's

first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a short term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to short-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary ser-

vices that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(6) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades, or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent.** (1) Prior to the short-term suspension of any student a conference shall be conducted with the student as follows:

(a) An oral or written notice of the alleged misconduct and violation(s) of school district rules shall be provided to the student,

(b) An oral or written explanation of the evidence in support of the allegation(s) shall be provided to the student,

(c) An oral or written explanation of the corrective action or punishment which may be imposed shall be provided to the student, and

(d) The student shall be provided the opportunity to present his/her explanation.

(2) In the event a short-term suspension is to exceed one calendar day the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to an informal conference pursuant to WAC ((180-40-255)) 392-400-255 and that the suspension may possibly be reduced as a result of such conference.

(3) All short-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-255 Short-term suspension—Grievance procedure.** Any student, parent, or guardian who is aggrieved by the imposition of a short-term suspension shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the superintendent of the district or his/her designee. If the grievance is not resolved, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC ((~~180-40-317~~)) 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The short-term suspension shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-260 Long-term suspension—Conditions and limitations.** A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC ((~~180-40-225~~)) 392-400-225, subject to the following limitations or conditions and the notice requirements set forth in WAC ((~~180-40-265~~)) 392-400-265 and the hearing requirements set forth in WAC ((~~180-40-270~~)) 392-400-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-275 Expulsion—Conditions and limitations.** A student may be expelled for violation of school district rules adopted pursuant to WAC (~~(180-40-225)~~) 392-400-225, subject to the following limitations or conditions, the notice requirements set forth in WAC (~~(180-40-280)~~) 392-400-280, and the hearing requirements set forth in WAC (~~(180-40-285)~~) 392-400-285:

(1) The nature and circumstances of the violation must reasonably warrant the harshness of expulsion.

(2) No student shall be expelled unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed.

(3) In addition to the alternative corrective action requirement of subsection (2) of this section, no student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be expelled by reason, in whole or part, of one or more unexcused absences unless the school district has also first:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school

officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Once a student has been expelled in compliance with this chapter the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs.

(5) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(6) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-285 Expulsion—Prehearing and hearing process.** (1) If a request for a hearing is received pursuant to WAC (~~(180-40-280)~~) 392-400-280 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(b) Be represented by legal counsel,

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or,

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness,

(d) Present his or her explanation of the alleged misconduct, and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the expulsion or lesser form of corrective action or punishment to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

**AMENDATORY SECTION** (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-295 Emergency expulsion—Limitations.** Notwithstanding any other provision of this chapter, a student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations: Provided, That the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion shall continue until rescinded by the superintendent or his or her designee, or until modified or reversed pursuant to the hearing provisions set forth in WAC ((180-40-305)) 392-400-305 or the appeal provisions set forth in WAC ((180-40-315)) 392-400-315.

**AMENDATORY SECTION** (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right.** (1) The student and his or her parent(s) or guardian(s) shall be notified of the emergency expulsion of the student and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s) or guardian(s) within twenty-four hours of the expulsion and documenting delivery by obtaining his or her signature acknowledging receipt or the written certification of the person making the delivery, or (b) by certified letter(s) deposited in the United States mail, within twenty-four hours of the expulsion: Provided, That if the emergency expulsion is based upon a failure to comply with the state immunization law (see chapter ((180-38)) 392-380 WAC), the notice must be received by the student's parent(s) or guardian(s) prior to the emergency expulsion of the student regardless of the method of delivery. In addition, if the notice is by certified letter, reasonable attempts shall be made to notify the student and his or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible,

(b) Specify the alleged reason(s) for the emergency expulsion,

(c) Set forth the corrective action or punishment taken and proposed,

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s) as soon as reasonably possible, and

(e) Set forth the facts that:

(i) A written (or "oral" if provided for by school district policy) request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the tenth school business day after receipt of the notice of opportunity for a hearing, and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the emergency expulsion may be continued as deemed necessary by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within ten school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule of the school district.

(3) If a request for a hearing is not received within the required ten school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the emergency expulsion may be continued as deemed necessary by the school district.

**AMENDATORY SECTION** (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-305 Emergency expulsion—Prehearing and hearing process.** (1) If a request for a hearing within the required ten school business days is received pursuant to WAC ((180-40-300)) 392-400-300, the school district shall immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the third school business day after receipt of the request for hearing.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(b) Be represented by legal counsel,

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or,

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible dis-



district official(s) or the student of retaliation against the student if he or she appears as a witness,

(d) Present his or her explanation of the alleged misconduct, and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) Within one school business day after the date upon which the hearing concludes, a decision as to whether or not the expulsion shall be continued shall be rendered, and the student's legal counsel or, if none, the student and his or her parent(s) or guardian(s) shall be notified thereof by depositing a certified letter in the United States mail. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether or not the emergency situation giving rise to the emergency expulsion continues), and whether or not the emergency expulsion shall be continued or a lesser form of corrective action or punishment is to be imposed.

(7) An emergency expulsion may be continued following the hearing on the basis that the emergency situation continues and/or as corrective action or punishment for the action(s) giving rise to the emergency expulsion in the first instance.

**AMENDATORY SECTION** (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-310 Appeals—Long-term suspension and expulsion.** Appeals from decisions rendered pursuant to WAC ((180-40-270, 180-40-285 and 180-40-305)) 392-400-270, 392-400-285 and 392-400-305 which impose either a long-term suspension or an expulsion upon a student shall be governed as follows:

(1) Any school district board of directors may delegate its authority to hear and decide long-term suspension and expulsion appeals to a school district disciplinary appeal council established by the board. School district disciplinary appeal councils shall be appointed by the school district board of directors for fixed terms and shall consist of not less than three persons.

(2) If the case was not heard and decided by the school district board of directors or school district disciplinary appeal council, the student and his or her parent(s) or guardian(s) shall have the right to appeal the decision to the board of directors or the disciplinary appeal council. Notice indicating that the student or his or her parent(s) or guardian(s) desire to appeal the decision shall be provided to either the office of the school district superintendent or to the office of the person who rendered the decision within three school

business days after the date of receipt of the decision. The notice of appeal shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule or policy of the district.

(3) If an appeal is not taken to the board of directors or disciplinary appeal council within the required three school business day period, the suspension or expulsion decided upon may be imposed as of the calendar day following expiration of the three school business day period.

(4) If a timely appeal is taken to the board of directors or disciplinary appeal council, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

(b) An emergency expulsion may be continued during the appeal period for so long as the student continues to pose an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process of the student's school;

(c) Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion; and

(d) Any student subjected to a temporary suspension who returns to school before the appeal is decided shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the suspension if:

(i) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(ii) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(5) An appeal from any decision of a school board or disciplinary appeal council to impose or to affirm the imposition of a long-term suspension or an expulsion shall be to the courts. Whether or not the decision of a school board or disciplinary appeal council shall be postponed pending an appeal to superior court shall be discretionary with the school board or disciplinary appeal council except as ordered otherwise by a court.

**AMENDATORY SECTION** (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.** (1) If a notice of appeal to the school board of directors or school district disciplinary appeal council is received pursuant to WAC ((180-40-310)) 392-400-310(2) within the required three school business days, the board or council shall schedule and hold an informal conference to review the matter within ten school business days after the date of receipt of such appeal notice. The purpose of the meeting shall be to meet and confer with the parties in order to decide upon the most appropriate means of disposing of the appeal as provided for in this

section. At that time the student or the student's parent(s) or guardian(s) or legal counsel shall be given the right to be heard and shall be granted the opportunity to present such witnesses and testimony as the board or council deems reasonable. The board or council shall agree to one of the following procedures prior to adjournment or recess:

(a) Study the hearing record or other material submitted and render its decision within ten school business days after the date of the informal conference, or

(b) Schedule and hold a meeting to hear further arguments based on the record before the board or council and render its decision within fifteen school business days after the date of the informal conference, or

(c) Schedule and hold a meeting within ten school business days after the date of the informal conference for the purpose of hearing the case de novo.

(2) In the event the school board of directors or school district disciplinary appeal council elects to hear the appeal de novo, the following rights and procedures shall govern the proceedings:

(a) The student and his or her parent(s) or guardian(s) shall have the right to:

(i) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(ii) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(A) That the district made a reasonable effort to produce the witness and is unable to do so; or,

(B) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness,

(iii) Present his or her explanation of the alleged misconduct, and

(iv) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires,

(b) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing, and

(c) Either a tape-recorded or verbatim record of the hearing shall be made.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-400-317 Appeals—Discipline and short-term suspension grievances.** Any school district board of directors may delegate its authority to hear and decide discipline and short-term suspension grievance appeals filed pursuant to WAC ((180-40-240 and 180-40-253)) 392-400-240 and 392-400-253 to a school district disciplinary appeal

council established pursuant to WAC ((180-40-310)) 392-400-310(1).

## WSR 07-04-049

### PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 31, 2007, 1:27 p.m., effective March 3, 2007]

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

Purpose: The changes are being made as required under E2SHB 3098.

Citation of Existing Rules Affected by this Order: Amending chapter 392-335 WAC.

Statutory Authority for Adoption: RCW 28A.225.160.

Adopted under notice filed as WSR 06-20-131 on October 4, 2006.

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

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

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

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

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

Date Adopted: January 31, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-335-005 Authority and purpose.** This chapter is adopted pursuant to authority vested in the ((state board of education)) office of superintendent of public instruction by RCW 28A.225.160 which authorizes the ((state board of education)) office of superintendent of public instruction to establish uniform entry qualifications.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-335-010 Uniform entry age for kindergarten.** Except as provided in WAC ((180-39-025)) 392-335-025, a child must be five years of age as of midnight August 31 of the year of entry to be entitled to enter kindergarten.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-335-015 Uniform entry age for first grade.**

Except as provided in WAC ((~~180-39-020~~) 392-335-020 and ((~~180-39-025~~) 392-335-025, a child must be six years of age as of midnight August 31 of the year of entry to be entitled to enter first grade.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-335-020 Kindergarten experience qualification for first grade.** Any child not otherwise eligible for entry to first grade who successfully has completed a kindergarten program in a public or private school shall be permitted entry to the school program: Provided, That the kindergarten program standards substantially equaled or exceeded the applicable basic education program requirements of RCW 28A.150.220 and WAC 180-16-200 through 180-16-220, each as now or hereafter amended: Provided further, That if the district of entry has reason to believe that an individual child so qualified may not succeed in the district's first grade program, the district shall have the option of placing the child in either kindergarten or the first grade for evaluation in the areas specified in WAC ((~~180-39-025~~) 392-335-025 and a final determination of the child's appropriate grade level placement no later than the thirtieth calendar day following the child's first day of attendance.

**WSR 07-04-050**

**PERMANENT RULES**

**SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed January 31, 2007, 1:29 p.m., effective March 3, 2007]

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

Purpose: The changes are being made as required under E2SHB 3098.

Citation of Existing Rules Affected by this Order: Amending WAC 392-204-009.

Statutory Authority for Adoption: RCW 28A.320.240.

Adopted under notice filed as WSR 06-20-130 on October 4, 2006.

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

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

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

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

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

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

Date Adopted: January 31, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-204-009 Definitions.** (1) "Teacher-librarian" means a certified teacher with a library media endorsement under WAC ((~~180-82A-202 (1)(i)~~, ~~180-82-344~~, or ~~180-82-346~~) 181-82A-202 (1)(i), 181-82-344, or 181-82-346.

(2) "School library media program" means a school-based program that is staffed by a certificated teacher-librarian.

**WSR 07-04-079**

**PERMANENT RULES**

**SPOKANE COUNTY AIR**

**POLLUTION CONTROL AUTHORITY**

[Filed February 5, 2007, 10:08 a.m., effective March 8, 2007]

Effective Date of Rule: Immediately.

Purpose: Clarifies registration requirements in SCAPCA Regulation I, Section 4.02; general "house-keeping" of definitions in Section 10.01; establishes a fee if registration information is not submitted within forty-five days in Section 10.02; and amends existing timeline for fees additional fees assessed pursuant to Article X in Section 10.02.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Section 4.02.A-C and SCAPCA Regulation I, Section 10.01-10.02.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.151 (1) and (2), 70.94.380, and 70.94.431(7).

Adopted under notice filed as WSR 07-01-075 on December 18, 2006.

A final cost-benefit analysis is available by contacting Matt Holmquist, 1101 West College Avenue, Suite 403, Spokane, WA 99201, phone (509) 477-4727, fax (509) 477-6828, e-mail mgholmquist@scapca.org.

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

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

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

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

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

Date Adopted: February 1, 2007.

Matt Holmquist  
Compliance Administrator

### **AMENDATORY SECTION**

SCAPCA Regulation I, Article X, Section 4.02

#### **SECTION 4.02 GENERAL REQUIREMENTS FOR REGISTRATION**

##### **A. Registration Responsibility.**

The owner, operator, or a designated agent of a stationary source, shall register said stationary source, except those stationary sources exempted under Section 4.03 of this Article, by obtaining proper ((using)) forms ((furnished by)) from the Authority or using an alternative to forms when required by the Authority. The owner and operator of the stationary source are responsible for registration and for timely submitting accurate and complete registration information.

##### **B. Registration Information.**

The owner, operator, or designated agent shall register each emissions unit, including quantifiable fugitive air emissions, located at the stationary source. The owner, operator, or designated agent shall provide information to the Authority, as may be required by the Authority, concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information, as is relevant to air pollution. The owner, operator, or designated agent shall submit updated registration information at least annually as required by the Authority, using forms provided by the Authority unless the Authority provides in writing an alternative format or requires an alternate method of reporting registration information. The forms provided by the Authority shall be completed and returned to the Authority within 45 days.

##### **C. Signature.**

The owner, operator, or the designated agent for such owner or operator shall sign each registration form unless the Authority provides in writing an alternative format or requires an alternate method of reporting registration information verifying that the information on the form is to his or her knowledge, complete and accurate.

**D. Reporting requirements for transfer or change of ownership of registered stationary sources.**

1. The new owner or operator, that assumes ownership and/or operational control of a registered stationary source, shall report any change of ownership or change of operator to the Authority, within ninety (90) days of completing transfer of ownership and/or assuming operational control. The new owner or operator shall report the change on "Change of Ownership Forms" provided by the Authority. The report shall contain the following information:

- a. Legal name of the company prior to transfer;
- b. Site address;
- c. Previous owner's name;
- d. New legal name of company (if different)
- e. New owner's name;
- f. New owner's mailing address;
- g. New owner's phone number;
- h. Effective date of the transfer;

i. Description of the affected emission units; and

j. New owner's or responsible agent's signature.

2. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a stationary source.

**E. Reporting requirements for permanent shutdown of registered stationary sources.**

1. The owner or operator shall file a "Source Closure Notification Form" with the Authority within ninety (90) days after the owner or operator determines that operations, producing air contaminant emissions, have permanently ceased. The report shall contain the following information:

- a. Legal name of the company prior to closure or shutdown;
- b. Stationary source address;
- c. Effective date of the stationary source closure or emissions unit shutdown;
- d. Description of the affected emission units; and
- e. Owner's or responsible agent's signature.

2. In the event of a permanent closure, process and pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g. disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation).

##### **F. New Sources.**

1. The owner or operator of a stationary source shall file a *Notice of Construction and Application for Approval*, in accordance with Article V of this Regulation, prior to establishing any new or modified stationary source. An approved *Notice of Construction and Application for Approval* suffices to meet the initial requirement to register the stationary source. Registration information shall be updated annually thereafter.

2. Prior to re-opening a closed stationary source, or establishing a new source at a site for which the Authority has received a "Source Closure Notification Form", the proponent shall contact the Authority for a determination as to whether a *Notice of Construction and Application for Approval* must be filed with, and approved by, the Control Officer, per the requirements of Article V of this Regulation, prior to operation.

### **AMENDATORY SECTION**

SCAPCA Regulation I, Article X, Section 10.01

#### **SECTION 10.01 DEFINITIONS**

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

~~((A. Air Operating Permit Source means any facility required to have an operating permit pursuant to Chapter 173-401 WAC.))~~

~~((B))~~ A. Emission Fee means the component of a registration fee or operating permit fee, which is based on total actual annual emissions of criteria and toxic air pollutants, except as provided in Section 10.02.B. In the case of a new or modified source or a source being registered initially, the

emission fee is based on projected emissions as presented in an approved Notice of Construction or registration form.

((C)) B. Registration Period means the calendar year for which an annual fee has been assessed pursuant to Section 10.06.B.1. ~~((or 10.06.B.2.))~~

~~((D. Significant Emissions, for the purposes of this Article, means the same, as defined in Article I, Section 1.04, of this Regulation.))~~

### **AMENDATORY SECTION**

SCAPCA Regulation I, Article X, Section 10.02

#### **SECTION 10.02 FEES AND CHARGES REQUIRED**

A. Registration information not submitted within 45 days pursuant to Section 4.02.

If registration information is submitted after 45 days, a processing fee of \$100 shall be added to the registration fee invoice.

B. Method of calculating registration fees in Section 10.06 when registration information required in Section 4.02 is not submitted within 90 days.

Any owner, operator, or designated agent that fails to submit registration information to the Authority within 90 days of the registration information request issue date or prior to the registration fee invoice date, whichever is later, shall be assumed to be operating at the source's maximum potential production rate and the registration fee specified in Section 10.06 will be assessed on that basis.

~~((A))~~ C. Additional fee for failure to pay any fee within 90 days of assessment.

Any fee assessed pursuant to Article X shall be paid within ~~((30))~~ 45 days of assessment. Any person who is more than ~~((90))~~ 45 days late (i.e., more than 90 days from assessment) with such payment shall pay an ~~((penalty))~~ additional fee equal to three times the amount of the original fee owed.

~~((B))~~ D. Revenues collected pursuant to RCW 70.94.-161.

Revenues collected pursuant to RCW 70.94.161 shall be deposited in the operating permit program dedicated account and shall be used exclusively for the program.

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

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

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

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

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

Date Adopted: January 25, 2007.

Vicki Rippie  
Executive Director

AMENDATORY SECTION (Amending WSR 06-18-034, filed 8/28/06, effective 9/28/06)

**WAC 390-24-010 Forms for statement of financial affairs.** The official form for statements of financial affairs as required by RCW 42.17.240 is designated "F-1," revised ~~((6/06))~~ 2/07. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.

### **WSR 07-04-084**

#### **PERMANENT RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed February 5, 2007, 2:00 p.m., effective March 8, 2007]

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

Purpose: To provide clarification and guidance to elected and appointed officials on the filing requirements under RCW 42.17.241. Amends WAC 390-24-010 Forms for statement of financial affairs.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 390-24-010].

Statutory Authority for Adoption: RCW 42.17.370 and 42.17.241 (1)(n).

Adopted under notice filed as WSR 06-23-017 on November 3, 2006.

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<b>PDC FORM</b> <b>F-1</b> (6/06)	<b>PERSONAL FINANCIAL AFFAIRS STATEMENT</b>		PDC OFFICE USE P O S T  M A R K  R E C E I V E D
	<b>DOLLAR CODE</b>	<b>AMOUNT</b>	

Refer to instruction manual for detailed assistance and examples.

**Deadlines:** Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

**SEND REPORT TO PUBLIC DISCLOSURE COMMISSION**

Last Name First Middle Initial	Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.
Mailing Address (Use PO Box or Work Address)	
City County Zip + 4	
Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ year _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional Staff	Office Held or Sought Office title: _____ County, city, district or agency of the office, name and number: _____ Position number: _____ Term begins: _____ ends: _____

**1 INCOME** List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in item 3 on reverse)

<small>Show Self (S) Spouse (SP) Dependent (D)</small>	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)

Check Here  if continued on attached sheet

**2 REAL ESTATE** List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$7,500 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received		
		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original      Current

Check here  if continued on attached sheet

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3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS	List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.		
<p>A. Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.</p> <p>B. Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.</p> <p>C. Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.</p>	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)

Check here  if continued on attached sheet.

4 CREDITORS	List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.			AMOUNT (USE CODE)	
Creditor's Name and Address	Terms of Payment	Security Given	Original	Present	

Check here  if continued on attached sheet.

- 5** All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.
- Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.**
- A. Were you, your spouse or dependents an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part A.
  - B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part A.
  - C. Did you, your spouse or dependents own a business at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part A.
  - D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part B.
  - E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? \_\_\_ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training? \_\_\_ If yes to either or both questions, complete Supplement, Part C.

<p><b>ALL FILERS EXCEPT CANDIDATES.</b> Check the appropriate box.</p> <p><input type="checkbox"/> I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.</p> <p><input type="checkbox"/> I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.</p>	<p><b>CERTIFICATION:</b> I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.</p> <p>Signature _____ Date _____</p> <p>Contact Telephone: (    ) _____</p> <p>Email: _____(work)</p> <p>Email: _____(Home)</p>
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REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

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**PUBLIC DISCLOSURE COMMISSION**  
  
 711 CAPITOL WAY RM 206  
 PO BOX 40908  
 OLYMPIA WA 98504-0908  
 (360) 753-1111  
 TOLL FREE 1-877-601-2828  
 EMAIL: pdc@pdc.wa.gov

PDC FORM <b>F-1</b> SUPPLEMENT (6/06)	<b>SUPPLEMENT PAGE</b> PERSONAL FINANCIAL AFFAIRS STATEMENT
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PROVIDE INFORMATION FOR YOURSELF, SPOUSE, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name	First	Middle Initial	DATE				
<p><b>A OFFICE HELD, BUSINESS INTERESTS:</b> For each corporation, non-profit organization, association, union, partnership, joint venture or other entity in which you, your spouse or dependents are an officer, director, general partner, trustee, or 10 percent or more owner – provide the following information:</p> <ul style="list-style-type: none"> <li>• Legal Name: Report name used on legal documents establishing the entity.</li> <li>• Trade or Operating Name: Report name used for business purposes if different from the legal name.</li> <li>• Position or Percent of Ownership: The office, title and/or percent of ownership held.</li> <li>• Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.</li> <li>• Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.</li> <li>• Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$7,500 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.</li> <li>• Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.</li> </ul>							
<b>ENTITY NO. 1</b> LEGAL NAME:		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/> POSITION OR PERCENT OF OWNERSHIP					
TRADE OR OPERATING NAME:							
ADDRESS:							
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:							
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE: <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Purpose of payments</td> <td style="width: 40%;">Amount (actual dollars)</td> </tr> <tr> <td></td> <td style="text-align: center;">\$</td> </tr> </table>				Purpose of payments	Amount (actual dollars)		\$
Purpose of payments	Amount (actual dollars)						
	\$						
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE: <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Customer name:</td> <td style="width: 40%;">Purpose of payment (amount not required)</td> </tr> </table>				Customer name:	Purpose of payment (amount not required)		
Customer name:	Purpose of payment (amount not required)						
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):							
Check here <input type="checkbox"/> if continued on attached sheet							

CONTINUE PARTS B AND C ON NEXT PAGE

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Page 2

F-1 Supplement

Name				
ENTITY NO. 2		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>		
LEGAL NAME:		POSITION OR PERCENT OF OWNERSHIP		
TRADE OR OPERATING NAME:				
ADDRESS:				
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:				
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:				
Purpose of payments		Amount (actual dollars)		
		\$		
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE:				
Customer name:		Purpose of payment (amount not required)		
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):				
Check here <input type="checkbox"/> if continued on attached sheet				
<b>B LOBBYING:</b> List persons for whom you or any immediate family member lobbied or prepared state legislation or state rules, rates or standards for current or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.				
Person to Whom Services Rendered		Description of Legislation, Rules, Etc.		Compensation (Use Code)
Check here <input type="checkbox"/> if continued on attached sheet				
<b>C FOOD TRAVEL SEMINARS</b> Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse or dependents, or a combination thereof: 1) Food and beverages costing over \$50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	
Check here <input type="checkbox"/> if continued on attached sheet				

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<b>PUBLIC DISCLOSURE COMMISSION</b> 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2828		PDC FORM <b>F-1</b> (2/07)	<b>PERSONAL FINANCIAL AFFAIRS STATEMENT</b>	P M PDC OFFICE USE O A R S A K T  R E C E I V E D																																		
Refer to instruction manual for detailed assistance and examples.  <b>Deadlines:</b> Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.  <b>SEND REPORT TO PUBLIC DISCLOSURE COMMISSION</b>		<b>DOLLAR CODE</b> <b>AMOUNT</b> A                      \$1 to \$2,999 B                      \$3,000 to \$14,999 C                      \$15,000 to \$29,999 D                      \$30,000 to \$74,999 E                      \$75,000 or more																																				
Last Name                      First                      Middle Initial		Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.																																				
Mailing Address (Use PO Box or Work Address)																																						
City                      County                      Zip + 4																																						
Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ year _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional staff of the Governor's Office and the Legislature		Office Held or Sought  Office title: _____  County, city, district or agency of the office, name and number: _____  Position number: _____  Term begins: _____ ends: _____																																				
<b>1 INCOME</b> List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)																																						
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All Other Property Entirely or Partially Owned																																						

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<b>3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS</b>		List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.	
A. Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
B. Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.			
C. Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.			
Check here <input type="checkbox"/> if continued on attached sheet.			

<b>4 CREDITORS</b>		List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.		AMOUNT (USE CODE)	
Creditor's Name and Address	Terms of Payment	Security Given	Original	Present	
Check here <input type="checkbox"/> if continued on attached sheet.					

**5** All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

**Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.**

- A. At any time during the reporting period were you, your spouse or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? \_\_\_ If yes, complete Supplement, Part A.
- B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part A.
- C. Did you, your spouse or dependents own a business at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part A.
- D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part B.
- E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? \_\_\_ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training? \_\_\_ If yes to either or both questions, complete Supplement, Part C.

<p><b>ALL FILERS EXCEPT CANDIDATES.</b> Check the appropriate box.</p> <p><input type="checkbox"/> I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.</p> <p><input type="checkbox"/> I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.</p>	<p><b>CERTIFICATION:</b> I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.</p> <p>Signature _____ Date _____</p> <p>Contact Telephone: (    ) _____</p> <p>Email: _____(work)</p> <p>Email: _____(Home)</p>
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**REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE**

**F-1**

**Information Continued**

Name						
<b>1 INCOME</b> (continued)						
Show Self (S) Spouse (SP) Dependent (D)	Name and Address of Employer or Source of Compensation		Occupation or How Compensation Was Earned		Amount: (Use Code)	
<b>2 REAL ESTATE</b> (continued)						
Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original   Current	
All Other Property Entirely or Partially Owned						
<b>3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS</b> (continued)						
A. Name and address of each bank or financial institution		Type of Account or Description of Asset		Asset Value (Use Code)	Income Amount (Use Code)	
B. Name and address of each insurance company						
C. Name and address of each company, association, government agency						
<b>4 CREDITORS</b> (continued)						
Creditor's Name and Address			Terms of Payment	Security Given	AMOUNT (USE CODE) Original   Present	

 <p><b>PUBLIC DISCLOSURE COMMISSION</b>                  711 CAPITOL WAY RM 206                  PO BOX 40908                  OLYMPIA WA 98504-0908                  (360) 753-1111                  TOLL FREE 1-877-601-2828                  EMAIL: <a href="mailto:pdcc@pdcc.wa.gov">pdcc@pdcc.wa.gov</a></p>	PDC FORM <b>F-1</b> SUPPLEMENT (2/07)	<b>SUPPLEMENT PAGE</b> PERSONAL FINANCIAL AFFAIRS STATEMENT	
<b>PROVIDE INFORMATION FOR YOURSELF, SPOUSE, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD</b>			
Last Name	First	Middle Initial	DATE
<p><b>A OFFICE HELD, BUSINESS INTERESTS:</b> Provide the following information if, during the reporting period, you, your spouse or dependents</p> <p>(1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or</p> <p>(2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.</p> <ul style="list-style-type: none"> <li>• Legal Name: Report name used on legal documents establishing the entity.</li> <li>• Trade or Operating Name: Report name used for business purposes if different from the legal name.</li> <li>• Position or Percent of Ownership: The office, title and/or percent of ownership held.</li> <li>• Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.</li> <li>• Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.</li> <li>• Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$7,500 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.</li> <li>• Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.</li> </ul>			
<b>ENTITY NO. 1</b> LEGAL NAME:		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/> POSITION OR PERCENT OF OWNERSHIP	
TRADE OR OPERATING NAME:			
ADDRESS:			
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:			
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:			
Purpose of payments		Amount (actual dollars)	
		\$	
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE:			
Customer name:		Purpose of payment (amount not required)	
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):			
Check here <input type="checkbox"/> if continued on attached sheet			

**CONTINUE PARTS B AND C ON NEXT PAGE**

Name				
<b>ENTITY NO. 2</b> <span style="float: right;">Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/></span> LEGAL NAME: <span style="float: right;">POSITION OR PERCENT OF OWNERSHIP</span> TRADE OR OPERATING NAME: ADDRESS:  BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:  PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE: Purpose of payments <span style="float: right;">Amount (actual dollars)</span> <span style="float: right;">\$</span>  PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE: Customer name: <span style="float: right;">Purpose of payment (amount not required)</span>  WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):  Check here <input type="checkbox"/> if continued on attached sheet				
<b>B LOBBYING:</b> List persons for whom you or any immediate family member lobbied or prepared state legislation or state rules, rates or standards for current or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.				
Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)		
Check here <input type="checkbox"/> if continued on attached sheet				
<b>C FOOD TRAVEL SEMINARS</b> Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse or dependents, or a combination thereof: 1) Food and beverages costing over \$50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	
Check here <input type="checkbox"/> if continued on attached sheet				

**Information Continued**

**F-1 Supplement**

Name	
<b>ENTITY NO.</b> LEGAL NAME: TRADE OR OPERATING NAME: ADDRESS:  BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:  PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE: Purpose of payments	Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>  POSITION OR PERCENT OF OWNERSHIP     Amount (actual dollars)  \$
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE: Customer name:	Purpose of payment (amount not required)
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):	

<b>B LOBBYING:</b> (Continued)		
Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)

<b>C FOOD TRAVEL SEMINARS</b> (continued)				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	

**WSR 07-04-087**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed February 6, 2007, 11:50 a.m., effective March 9, 2007]

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

Purpose: The amendment to this WAC 232-12-828, clarifies lawful and unlawful activity for hunting of game birds and animals by persons with a disability. It also provides flexibility for hunters with a disability who want to hunt near roadways.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-828 (Amending Order 04-98, filed May 12, 2004, effective June 12, 2004).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-21-040 on October 11, 2006.

Changes Other than Editing from Proposed to Adopted Version: The definition of "visually impaired" is stricken under subsection (1)(h)(iii), because the definition is already contained in subsection (1)(e). A definition of "public highway" is added under subsection (1)(i). Subsection (5) is changed to provide direction for a hunter with a disability who finds it impossible to completely remove his/her vehicle from a nonpaved roadway and wants to shoot from the vehicle.

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: February 6, 2007.

J. P. Koenings  
 Director

AMENDATORY SECTION (Amending Order 04-98, filed 5/12/04, effective 6/12/04)

**WAC 232-12-828 Hunting of game birds and animals by persons with a disability.** (1) Definitions:

(a) "Hunter with a disability" means a person with a permanent disability who possesses a disabled hunter permit issued by the department. A hunter with a disability must have all required licenses, tags, permits, and stamps before hunting.

(b) "Disabled hunter permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require

showing that the applicant is a person with a qualifying disability. Upon approval of the application, the department will issue a vehicle identification placard. A designated hunter companion card will be issued with a hunting license.

(c) "Designated hunter companion" means a person who assists a hunter with a disability in the stalking, shooting, tracking, retrieving, or tagging of game birds and game animals.

(d) "Designated hunter companion card" means an identification card issued by the department to the hunter with a disability.

(e) "Blind or visually impaired" means a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees.

(f) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed a 1/4-mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(g) "Special use permit" means a permit issued by the department to a person with a specific permanent disability as a reasonable accommodation. The special use permit allows for a specific act or acts to include, but not be limited to, use of adaptive mechanical, electrical, or specialty equipment or devices that aid the person in hunting.

(h) "Person with a disability" means:

(i) A person who has a permanent disability and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device for mobility, including, but not limited to, a wheelchair, crutch, cane, walker, or oxygen bottle; or

(ii) A person who has a permanent disability and is physically incapable of holding and safely operating a firearm or other legal hunting device.

This definition includes, but is not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities for holding and safely operating a firearm or other legal hunting device; or

(iii) A person who is blind or visually impaired.

~~("Visually impaired" means central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than twenty degrees.)~~ (i) "Public highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel as defined in RCW 46.04.197.

(2) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability. The hunter with a disability or the designated hunter companion must immediately cut, notch, or date any required tag. The tag must be



affixed to the carcass of the game bird or animal as soon as is reasonably possible after killing the game.

(3) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

(4) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion identification card on his or her person.

(5) It is unlawful for a hunter with a disability to shoot from a motor vehicle, ~~((nonhighway vehicle or snowmobile))~~ unless the vehicle is stopped, the motor is turned off and the vehicle is ~~((not on or beside))~~ removed from the maintained portion of a public highway. If the roadway is not paved, and it is impossible for the hunter with a disability to completely remove the vehicle from the roadway, then the hunter may shoot from the vehicle if the vehicle is as far off the roadway as possible. A disabled hunter vehicle identification placard must be displayed.

(6) It is unlawful for any person to possess a loaded firearm in or on a ~~((moving))~~ motor vehicle ~~((or to shoot a firearm, crossbow, or bow and arrow from, across, or along the maintained portion of a public highway))~~, except if the person is a hunter with a disability and the vehicle is in compliance with subsection (5) of this section.

(7) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(8) A designated hunter companion shooting game for or who may be shooting game for a hunter with a disability must have a valid hunting license issued by Washington or another state.

### WSR 07-04-093

#### PERMANENT RULES

#### CENTRAL WASHINGTON UNIVERSITY

[Filed February 6, 2007, 1:11 p.m., effective March 9, 2007]

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

Purpose: Clarify parking rules consistent with administrative practice and provide online reference information.

Citation of Existing Rules Affected by this Order: Amending WAC 106-116-201, 106-116-202, 106-116-203, 106-116-205, 106-116-207, 106-116-305, 106-116-308, 106-116-514, and 106-116-603.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Adopted under notice filed as WSR 07-02-096 on January 3, 2007.

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 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 0, Repealed 0.

Date Adopted: February 6, 2007.

Jerilyn S. McIntyre  
President

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

**WAC 106-116-201 Permitted parking areas.** University-owned parking areas are posted with permitting requirements. Permit requirements will be enforced Monday through Friday, 7:30 a.m. to 4:30 p.m., unless otherwise posted. No parking is permitted from 2:00 a.m. to 6:00 a.m. where posted. During quarter breaks, parking services may designate a specific lot for parking vehicles that will remain parked in a university parking lot for the quarter break.

AMENDATORY SECTION (Amending Order CWU AO 72, filed 5/2/94, effective 6/2/94)

**WAC 106-116-202 No parking areas.** The university reserves the right to close specific lots to permit holders and designate parking lot use for special events (i.e., sports events, concerts, camps, etc.).

Parking is permitted only in areas designated and marked for parking in accordance with all signs posted in the designated parking area.

For example, prohibited areas include fire hydrants, fire lanes, yellow curb zones, crosswalks, driveways, service drives, or any area not expressly permitted by sign or these regulations. Vehicles are not permitted to be parked on any undeveloped university property without the approval of the chief of the public safety and police services. This section will be enforced twenty-four hours a day.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

**WAC 106-116-203 Specific parking prohibitions.** (1) Parking in areas and places normally used for moving traffic is a specific violation of these regulations.

(2) Parking in such a position with relation to other parked cars or marked parking spaces as to impede, restrict, or prevent free ingress or egress by other automobiles violates these regulations.

(3) Parking in areas marked for a special permit or clearly designated by signing for special use not available to the general public or regular permit holders is prohibited. Examples: Parking in a space marked "disability permit only," or "health center permit only," or "psychology permit only."

(4) Parking and/or driving on sidewalks is prohibited.

(5) Parking or driving on lawns or flower beds is prohibited.

(6) Compact car zones are placed there for safety reasons. These spaces are to be used by small cars only. This ~~((does not include pickups (of any size)))~~ restriction includes any size of the following vehicles: Pickups, sport utility vehicles, station wagons or any other large vehicles.

AMENDATORY SECTION (Amending WSR 98-23-022, filed 11/9/98, effective 12/10/98)

**WAC 106-116-205 Apartment residents.** ~~((Residents of Brooklane Village, Roy P. Wahle Complex, Student Village Apartments, and Getz Short))~~ Apartment((s)) residents may be required to display resident parking identification permits to park in the parking area adjacent to their respective apartments but must register their vehicles with the housing office.

AMENDATORY SECTION (Amending WSR 98-23-022, filed 11/9/98, effective 12/10/98)

**WAC 106-116-207 ~~((Faculty))~~ Staff parking.** ~~((Faculty and))~~ Staff parking zones are posted and require ~~((faculty))~~ staff permits.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

**WAC 106-116-305 General permits.** (1) Daily parking permits are available from the automatic ticket dispensers and cashier's office. These permits must be displayed in clear view on the dash of the vehicle or as instructed on the permit, readable from outside the vehicle.

(2) Thirty-minute "load/unload permits" are available for loading and unloading. Load/unload permits are available to vendors conducting business on campus, service vehicles, and student vehicles. Load/unload permits are available at the public safety and police services department and the parking kiosk.

(3) No permits are available for inoperative or disabled vehicles. Public safety and police services should be contacted if your vehicle becomes disabled in a university-owned parking lot.

(4) Quarterly, academic year, and calendar year permits are available to ~~((faculty))~~ staff((-)) and students through the cashier's~~(')~~ office and parking services.

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

**WAC 106-116-308 Replacement of parking permit.** Lost or stolen parking permits must be reported to the public safety and police services department. A replacement request must be completed at parking services. Upon verification, the permit may be replaced for a \$10.00 processing fee.

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

**WAC 106-116-514 Election to forfeit or contest.** The notice of infraction issued pursuant to WAC 106-116-513 of these regulations shall inform the alleged violator that he/she may elect either to forfeit the monetary penalty to the infraction(s) charged or to contest the matter(s).

(1) If the alleged violator chooses to forfeit the penalty, he/she may do so by paying the appropriate amount to the cashier's office, Barge Hall. Payment will be in cash, check, certified check, credit or debit card, or by money order. Such payment may also be made by mail (other than cash payment). Such forfeiture shall constitute a waiver of a right to a hearing.

(2) If the alleged violator chooses to contest, he/she may do so by contacting parking services, where parking infraction appeal forms are available upon request or you may obtain an appeal form or complete an appeal form on the parking web site, <http://www.cwu.edu/~parking/appealprocess.html>. The completed form stating the reasons for challenging the validity of the assessed obligation must be filed in the parking office within fifteen days of the date of the infraction notice. The appeal must be reviewed by the university parking appeal board. The parking appeal board will render a decision in good faith.

(3) A person charged with a parking infraction who deems himself or herself aggrieved by the final decision of the university parking appeal board may, within ten days after written notice of the final decision, appeal by filing a written notice thereof with the public safety and police services department. Documents relating to the appeal shall immediately be forwarded to the lower Kittitas County district court which shall have jurisdiction over such offense and such appeal shall be heard de novo.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

**WAC 106-116-603 Monetary penalty schedule.**

<del>((</del> Offense	Penalty
(1) Improper display of permit .....	\$ 15.00
(2) Parking faculty-staff area .....	25.00
(3) Parking yellow stripe or curb .....	25.00
(4) Parking outside designated parking area .....	25.00
(5) Obstructing traffic .....	30.00
(6) Parking at improper angle or using more than one stall .....	15.00
(7) Violation of the bicycle parking rules in WAC 106-116-901 .....	15.00
(8) Reserved parking area .....	25.00
(9) No parking area .....	25.00
(10) Overtime parking .....	15.00
(11) Using counterfeit, falsely made, or altered permit .....	150.00 to 250.00

((Offense	Penalty
(12) <del>Illegal use of permit</del> .....	<del>150.00 to</del> 250.00
(13) <del>No current permit</del> .....	15.00
(14) <del>Parking service drive</del> .....	25.00
(15) <del>Parking/driving sidewalks, malls</del> ..	25.00
(16) <del>Parking/driving lawns</del> .....	25.00
(17) <del>Parking fire lane</del> .....	30.00
(18) <del>Parking fire hydrant</del> .....	30.00
(19) <del>Driving, walking, leading, etc., cer-</del> <del>tain animals on campus without per-</del> <del>mit (WAC 106-116-10401)</del> .....	15.00
(20) <del>Other violations of the CWU-</del> <del>parking and traffic</del> .....	<del>15.00 to</del> 250.00
(21) <del>Parking in a space marked "disabled</del> <del>person permit only"</del> .....	250.00
(22) <del>Continuous parking</del> .....	<del>25.00 to</del> 200.00
(23) <del>No parking 2:00 a.m. to 6:00 a.m.</del>	<del>25.00))</del>

A monetary penalty schedule is available on-line at <http://www.cwu.edu/~parking/wacrules.html#monetary>.

Failure to respond within twenty-eight days will result in doubling of the original monetary penalty and ~~((a \$5.00))~~ an administrative fee. However, in accordance with RCW 46.63.110~~((3))~~ (4), the penalty for failure to respond shall not exceed \$25.00 for any single infraction. Further failure to respond may result in one or more of the following sanctions:

- ~~((a))~~ (1) Withholding of transcripts;
- ~~((b))~~ (2) Deduction from payroll checks;
- ~~((c))~~ (3) Withholding of parking permits; and/or
- ~~((d))~~ (4) Referral to collection agency.

**WSR 07-04-095  
PERMANENT RULES**

**TRANSPORTATION COMMISSION**

[Filed February 6, 2007, 2:08 p.m., effective March 9, 2007]

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

Purpose: Enacting administrative rules as directed in RCW 47.29.030 to implement the transportation innovative partnership program.

Statutory Authority for Adoption: RCW 47.29.030.

Adopted under notice filed as WSR 06-20-069 on September 29, 2006.

Changes Other than Editing from Proposed to Adopted Version: Typographical and technical corrections only.

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 47, 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: December 12, 2006.

Reema Griffith  
Executive Director

**Chapter 468-600 WAC**

**TRANSPORTATION INNOVATIVE PARTNERSHIP PROGRAM**

NEW SECTION

**WAC 468-600-010 Intent.** The Transportation Innovative Partnership Act was created to encourage the innovative delivery and funding of important transportation-related projects and services by leveraging resources more readily available in the private sector.

The legislature has articulated the policy goals and objectives of the act, found in chapter 47.29 RCW. These rules are intended to prescribe the processes that will be used to implement a successful transportation innovative partnership program in the state of Washington.

NEW SECTION

**WAC 468-600-015 Definitions.** As used in these rules:

- (1) "Commission" means the Washington state transportation commission;
- (2) "Competing proposal" means a written submission to the department that a proposer submits in response to a notice issued by the department under WAC 468-600-320;
- (3) "Department" means the Washington state department of transportation;
- (4) "Eligible project" as defined in RCW 47.29.050 includes:

(a) Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and

(b) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of providing revenues to support financing of an eligible transportation project, or that are public projects that advance public purposes unrelated to transportation;

(5) "Eligible public works project" means only a project that meets the criteria of either RCW 47.29.060 (3) or (4);

(6) "Governor" means the governor of the state of Washington;

(7) "Key persons" means individuals or personnel employed by or affiliated with a proposer or team of proposers, and who, because of that person's responsibilities and participation in a proposed project, the department has formally designated as key to the proposer's ability to successfully develop or deliver the project;

(8) "Major partner" means, with respect to a limited liability company or joint venture, each firm, business organization or person that has an ownership interest therein in excess of five percent, unless the department has provided an alternate definition that applies only to a specific project or series of projects;

(9) "Major subcontractor" means any subcontractor designated in the proposal to perform ten percent or more of the scope of work for a proposed project, unless the department has provided an alternate definition that applies only to a specific project or series of projects;

(10) "Private sector partner" and "private partner" means a person, entity or organization that is not the federal government, a state, or a political subdivision of the state and that proposes to enter into an agreement with the state to participate in any or all portions of the design, development, construction, improvement, expansion, extension, delivery, operation, maintenance or financing of a project eligible under the act;

(11) "Proposal" means a written submission to the department satisfying the requirements of WAC 468-600-240 or 468-600-250;

(12) "Proposer" means a person, business entity, a consortium of business entities or a public sector entity that submit a proposal for review and evaluation under these rules, whether the proposal was solicited or unsolicited by the department;

(13) "Public facility" means a building, structure, vehicle, vessel or the like where ownership is retained by the public sector and where the facility is available for use by the general public. This does not include any facilities that are owned by the private sector;

(14) "Public funds" means all moneys derived from a public imposition of taxes, fees, charges and tolls, including those imposed by a private entity for the privilege to use a publicly owned facility;

(15) "Public-private partnership" and "PPP" mean a non-traditional arrangement between the department and one or more public or private entities for the implementation of an eligible project as defined in subsection (12) of this section;

(16) "Public project" means a project that is owned by the state or any of its political subdivisions;

(17) "Secretary" means the secretary of the Washington state department of transportation;

(18) "State" means the government of the state of Washington, including all agencies, organizations, boards, commissions, elected or appointed officials, who are empowered to act on behalf of the state of Washington;

(19) "Transportation Innovative Partnership Act" and "act" means the law enacted and codified in chapter 47.29 RCW, and any amendments thereto;

(20) "Transportation innovative partnership program" and "TIPP" means that portion of the department of transportation responsible for implementing and carrying out the

duties prescribed in chapter 47.29 RCW, these rules, and under the powers conferred upon the department to implement the executive branch functions of state government;

(21) "WSDOT" means the Washington state department of transportation.

## CONFLICT OF INTEREST, PROPOSER CONDUCT AND APPEARANCE OF FAIRNESS

### NEW SECTION

**WAC 468-600-030 Conflict of interest.** (1) When submitting a proposal, the proposer's representative must certify that he or she is unaware of any information that might be pertinent in determining whether an organizational conflict of interest exists. If the proposer is aware of information that might be pertinent to this issue, the proposer must provide, as an exception to the certification, a disclosure statement fully describing this information in a form approved by the commission as part of its proposal. For purposes of this section, "organizational conflict of interest" means that because of other activities or relationships with other persons, a proposer, a principal officer of a proposer, or a prime contractor who is proposed to perform construction or design work on an eligible project, is unable or potentially unable to render impartial assistance or advice to the state; or the person's objectivity in performing the proposed contract work is or might be otherwise impaired; or a person has an unfair competitive advantage.

(2) After review and approval by the commission, the department shall publish and make available conflict of interest guidelines and policies that encompass the standards of conduct required by federal and state law, and as further required in these administrative rules. The conflict of interest guidelines and policies may be modified as necessary to meet the particular objectives of individual projects, whether those projects emanate from solicited or unsolicited proposals.

### NEW SECTION

**WAC 468-600-035 Proposer conduct.** (1) Proposers are prohibited from influencing or attempting to influence the evaluation of, or the decision to select a specific project proposal that has been submitted, or may be submitted under these rules, except as specifically allowed under these rules or as specifically allowed by the state in any RFP document. This includes, but is not limited to, attempts to influence officers or employees of the state or elected or appointed officials of the local, state or federal level of government.

(2) For those activities not prohibited by subsection (1) of this section, but which attempt to influence decision making in any legislative branch, proposers must fully disclose all lobbying activities undertaken by any of its contractors, officers, employees or agents that are subject to public disclosure under chapter 42.17 RCW or federal law. For lobbying activities subject to chapter 42.17 RCW, copies of all required disclosure forms for the previous two years' reporting cycles must be submitted.

NEW SECTION

**WAC 468-600-038 Conflict of interest by state officials—Appearance of fairness.** (1) Any person elected, appointed or employed by the state, who has a conflict of interest or potential conflict of interest, must disclose such actual or potential conflict of interest and abstain from consideration, discussion, debate, and decision making concerning any project proposal submitted under these rules.

(2) During the pendency of any solicitation, negotiation or selection of a proposal, no member of the commission may engage in ex parte communications with proponents or opponents with respect to the proposal, unless that person:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(b) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each meeting where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of the commission from seeking in a public meeting specific information or data from such parties relative to the decision if both the request and the results are a part of the public record.

NEW SECTION

**WAC 468-600-040 Release of rights and indemnification of state.** By submitting a proposal, a proposer thereby waives and relinquishes any claim, right, or expectation to occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, rights of way, public property or public facility identified in the proposal as being necessary for or part of the proposed project. A proposer may not obtain any claim, right or expectation to use any such route, corridor, rights of way, public property or public facility by virtue of having submitted a proposal that proposes to use it or otherwise involves or affects it.

By submitting such a proposal, a proposer thereby waives and relinquishes any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, rights of way, alignment, or transportation mode or configuration identified in the proposal as being involved in or related to the proposed project, and proposer agrees to indemnify and hold the state harmless against any such claim made by any of its contractors, subcontractors, agents, employees and assigns.

The waiver and release of rights in this section do not apply to a proposer's rights in any documents, designs and other information and records that constitute "sensitive business, commercial or financial information" as that term is defined and used in WAC 468-600-605.

**SOLICITED PROPOSALS**NEW SECTION

**WAC 468-600-100 Department to establish programmatic approach to solicitation of TIP projects.** (1) The department shall establish a programmatic approach, or

plan, for the selection and solicitation of TIP projects. The plan will include maintaining a registry of projects eligible for development under a competitive solicitation process. The projects must meet all eligibility requirements of WAC 468-600-015(4). The projects should be reasonably described, including the status of any preliminary development or construction, and any public or private funds committed for any phase of the project, whether expended, appropriated, earmarked or otherwise identified as available for use.

(2) The department shall periodically update the information in the registry, and shall review and consider additions or deletions to the registry at least every two years. When considering additional projects for the registry, or removal of the projects on the registry, the department must publish a request for information that seeks comments and suggestions from the public and private sectors.

(3) At least once every two years, the department must develop a plan for conducting a solicitation of proposals under the TIP program. The purpose of this plan is to:

(a) Encourage sound programming and budgeting practices, which are the basis for submittals required under chapter 43.88 RCW;

(b) Ensure that the department does not issue a request for proposals that exceeds the resources available to properly evaluate, select and enter into development agreements;

(c) Ensure that development of projects under the TIP program would not run contrary to any legislatively enacted direction or express executive policies or directions; and

(d) Provide potential proposers an anticipated schedule for the solicitation and development of certain projects on the registry.

In selecting projects for competitive solicitation, the department should endeavor to follow the published plan for soliciting proposals for projects on the registry. However, the department is not required to solicit only those projects contained on the registry, nor is it required to conduct a solicitation for a predetermined number of projects each year or biennium, nor is it required to undertake projects in the exact order of consideration as published in the *Register*.

NEW SECTION

**WAC 468-600-102 Selection of projects for solicitation.** The department may select projects for development that it believes would benefit from the formation of a public-private partnership under the TIP program, and present a draft request for proposals for the selected project or projects to the commission for review and approval to proceed with a solicitation. In making its recommendation of projects for solicitation, the department should seek those that offer the greatest potential to accelerate cost-effective delivery of the project, promote innovative approaches to delivering the project, provide a means of financing for the project that might not otherwise be readily available under a traditional project delivery process, or otherwise meet the policy goals established in RCW 47.29.040. Before approving any projects proposed for solicitation, the commission must ensure that the projects are included in the Washington trans-

portation plan or otherwise identified by the commission as being a priority need for the state.

#### NEW SECTION

**WAC 468-600-103 Alternative process for soliciting projects authorized.** When the department in its sole discretion deems it appropriate to do so given the nature of the proposal, the department may specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected, that are in addition to or in lieu of those provided for in WAC 468-600-105 through 468-600-110 and 468-600-300 through 468-600-350. Any alternative process or processes so specified must comply with the requirements of RCW 47.29.010 through 47.29.290. Examples of possible alternative processes include:

(1) Issuing a request for qualifications, where proposers are ranked and selected based on the qualifications of the major partners, major subcontractors and key persons, which would result in a predevelopment agreement being entered into that authorizes the proposer to fully develop a detailed proposal that would be evaluated pursuant to WAC 468-600-350;

(2) Issuing a request for proposals that invites the private sector to make proposals to develop eligible projects that are contained in the department's registry of projects under WAC 468-600-100.

These examples are offered for illustrative purposes only, and should not be construed to limit the scope of the state's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of RCW 47.29.010 et seq.

#### NEW SECTION

**WAC 468-600-105 Issuance of requests for proposals.** The department shall draft and issue requests for proposals at the direction or on behalf of the commission pursuant to WAC 468-600-102. When drafting requests for proposals (RFP), the department must specify requirements for proposal content, and may identify criteria and procedures under which proposals will be evaluated and selected. If the commission approves the projects and the RFP proposed for solicitation, the department shall issue the RFP and publish notice as provided in WAC 468-600-106. The department may set the deadline for responses as it sees fit to encourage full knowledge, opportunity and competition among private entities. At a minimum, the request for proposals for each transportation project must include the following:

(1) **General information.**

(a) Notice of any preproposal conference as follows:

(i) The time, date and location of any preproposal conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A disclaimer that statements made by the department's representatives at the conference are not binding upon the state unless confirmed by written addendum.

(b) The name and title of the person authorized and designated by the department to receive the proposals and contact person (if different).

(c) Instructions and information concerning submission requirements including the address of the office to which proposals must be delivered and any other special information, e.g., whether proposals may be submitted by facsimile or electronic data interchange (secured e-mail).

(d) The time and date of closing after which the department will not accept proposals.

(e) The form and submission of proposals and any information required therein.

(f) If the agreement resulting from a solicitation will be a contract for a public work subject to chapter 39.12 RCW or the Davis-Bacon Act (40 U.S.C. section 3141 to 3148), a statement that no proposals will be considered by the state unless the proposal contains a statement by the proposer, as part of its proposal, that proposer agrees to be bound by and will comply with the provisions of chapter 39.12 RCW and 40 U.S.C. section 3141 to 3148.

(g) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with state law.

(h) How the state will notify proposers of addenda and how the state will make addenda available.

(2) **Project description.** A description of the eligible project for which the department is requesting proposals for a public-private partnership in such detail as the department considers appropriate or feasible under the circumstance.

(3) **Evaluation process.** A description of the process by which the proposals will be evaluated, including:

(a) A statement that the commission and/or department may reject any proposal not in compliance with all prescribed procedures and requirements and other applicable laws, and that the state reserves its rights under WAC 468-600-810;

(b) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any; and

(c) Evaluation criteria that the state will use to select a proposal(s) from among those submitted in response to the request for proposals.

(4) **Desired contract terms.** The department shall provide an outline or draft term sheet of those contract terms and conditions, including warranties and bonding requirements, that the department considers necessary.

(5) **Federal funds.** If federal funds are involved, the federal laws, rules and regulations applicable to the fund requirements shall govern in the event they conflict with a provision required by state law.

#### NEW SECTION

**WAC 468-600-110 Public notice of solicitation. (1) Notice and distribution fee.** The commission, or the department acting on behalf of the commission, shall furnish notice to a sufficient number of entities for the purpose of fostering and promoting competition. The notice shall indicate where, when, how, and for how long the solicitation document may be obtained and generally describe the work. The notice may contain any other appropriate information. The department may charge a fee or require a deposit for the solicitation doc-

ument. The department may furnish notice using any method determined to foster and promote competition, including:

(a) Mail notice of the availability of solicitation documents ("notice") to entities that have expressed an interest in department procurements;

(b) Place notice on the state of Washington's electronic procurement system; or

(c) Place notice on the department's and the commission's internet web site.

(2) **Method of publication.** The department shall furnish notice for every solicitation for proposals by any method that meets the requirements of law, including:

(a) Mail notice of the availability of solicitation documents ("notice") to entities that have expressed an interest in department procurements;

(b) Place notice on the state of Washington's electronic procurement system;

(c) Place notice on the department and commission's internet web site;

(d) Advertising - the department shall publish the advertisement for proposals at least once in at least one newspaper of general circulation in the area where the contract is to be performed, in at least one trade newspaper or publication of general statewide circulation and in as many additional issues and publications as the department may determine to be necessary or desirable to foster and promote competition.

(3) **Publication contents.** All advertisements for proposals shall set forth:

(a) The scheduled closing, that shall not be less than five days after the date of the last publication of the advertisement;

(b) The date that entities must file applications for prequalification if prequalification is a requirement and the class or classes of work for which entities must be prequalified;

(c) The nature of the work to be performed or the goods to be purchased;

(d) The office where any documents related to the solicitation may be reviewed;

(e) The name, title and address of the department employee authorized to receive proposals; and

(f) If applicable, that the contract is for a public work subject to chapter 39.12 RCW or the Davis-Bacon Act (40 U.S.C. sections 3141 to 3148).

(4) **Posting advertisement for proposals.** The department shall post a copy of each advertisement for proposals at the principal business office of the department. A proposer may obtain a copy of the advertisement for proposals upon request from the transportation innovative partnership program office, or on the internet at [www.wsdot.wa.gov](http://www.wsdot.wa.gov).

(5) **Notice to state office of minority and women's business enterprises (OMWBE).** The department shall provide timely notice of all solicitations to the state office of minority and women's business enterprises.

## UNSOLICITED PROPOSALS

### NEW SECTION

**WAC 468-600-200 Authority for the state to accept unsolicited proposals—Moratorium.** The commission may not accept or consider any unsolicited proposals before July 1, 2007.

### NEW SECTION

**WAC 468-600-210 Projects eligible for unsolicited proposals.** Projects that are the subject of an unsolicited proposal must meet the following minimum criteria:

(1) The project must meet the definition of an "eligible project" under WAC 468-600-015(4);

(2) The project must not be listed in the registry of projects intended for a competitive solicitation, under WAC 468-600-100;

(3) The project must be included in the Washington transportation plan or otherwise identified by the commission as being a priority need of the state.

### NEW SECTION

**WAC 468-600-215 Department's management of unsolicited proposals.** (1) The department may, at any time, select any class, category or description of proposal or an eligible project, including any individual proposal or project, for the purpose of giving priority to the processing and consideration of unsolicited proposals by issuing a written order that declares that the department will give priority to the processing and consideration of unsolicited proposals for certain types of projects (or to a particular proposal), and describes the class or character of the proposals or projects (or the particular proposal or project) that are given priority. The priority order may either specify the term of the priority order, identify the submitted proposals (or proposal) that are subject to the priority order, or provide that the priority order will continue in effect until recalled by a subsequent order of the department.

(2) Commencing on the effective date of the order giving priority, the department may undertake expedited processing and consideration of unsolicited proposals (or a particular unsolicited proposal) for transportation projects of the class, category or description contained in the order. The limited resources of the department, in such cases, will require either the postponement of, or delay in, the processing and consideration of unsolicited proposals for projects that are not within a class, category or description that is subject to a priority order.

(3) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that:

(a) Its proposal will enjoy the benefit of a priority order; and

(b) The processing and consideration of its proposal will not be subject to postponement or delay arising out of the department's issuance of an order that gives priority to another proposal or to proposals for different classes, categories or descriptions of projects.

(4) The department may, by written order, suspend the acceptance and consideration of proposals based on the types, classes, cost ranges, geographic areas of projects, or other factors as determined by the department. The order will specify either the term of the suspension or that the suspension will continue until recalled by a subsequent order of the department.

(5) Commencing on the effective date of the suspension order, the department will refuse to accept unsolicited proposals or unsolicited proposals for projects of the class, category or description contained in the order, and may, as stated in the order, cease further processing and consideration of any such unsolicited proposals then currently under consideration by the department.

(6) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that the processing and consideration of its proposal will not be subject to suspension under this rule.

(7) The state of Washington, the department of transportation, the Washington transportation commission, and their officers and employees, shall have no responsibility or liability of any nature for the preservation, confidentiality or safekeeping of any proposal that is subject to a suspension order under this rule and is submitted to the department while that suspension order is in effect.

#### NEW SECTION

**WAC 468-600-220 Submission of unsolicited conceptual proposals.** (1) Subject to WAC 468-600-210 through 468-600-215, any private entity or unit of government may submit an unsolicited conceptual proposal for a project to the department for consideration under the transportation innovative partnership program.

(2) A proposal review fee in the amount prescribed by WAC 468-600-230 must accompany any unsolicited conceptual proposal submitted by a private entity or unit of government.

(3) The proposer shall submit twenty copies, individually identified, of any unsolicited conceptual proposal in addition to the proposal bearing the signature of the authorized representative. The original proposal, required copies and processing fee shall be delivered to the department.

(4) The department will consider an unsolicited conceptual proposal only if:

(a) The proposed project is unique or innovative in comparison with, and is not substantially duplicative of, other transportation system projects included in the state transportation improvement program within the department or, if it is similar to a project in the state transportation improvement program, the proposed project has not been fully funded by the state or any other public entity as of the date the proposal is submitted, or the proposal offers an opportunity to materially advance or accelerate the implementation of the project. Unique or innovative features that may be considered by the department in evaluating such a proposal may include but are not limited to unique or innovative financing, construction, design, schedule or other project components as compared with other projects or as otherwise defined by state rules or regulations; and

(b) The conceptual phase includes all information required by and is presented in the format set out in WAC 468-600-240. Such information shall include a list of any proprietary information included in the proposal that the proposer considers protected trade secrets or other information exempted from disclosure under either WAC 468-600-605 or RCW 47.29.190.

(5) The department will not consider an unsolicited proposal for a project involving another state or local government unit of another state unless the department and the appropriate representative of the other state or of the local government unit of the other state have entered into an agreement that permits the acceptance of unsolicited proposals for such a project.

#### NEW SECTION

**WAC 468-600-230 Fees to accompany unsolicited proposals.** (Reserved.)

#### NEW SECTION

**WAC 468-600-232 Alternative process authorized.** When the commission in its sole discretion deems it appropriate to do so given the nature of the proposal, the commission may specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected, that are in addition to or in lieu of those provided for in WAC 468-600-240 through 468-600-370. Any alternative process or processes so specified must comply with the requirements of RCW 47.29.010 through 47.29.290. Examples of possible alternative processes include:

(1) Selecting a proposal for development into a final agreement based on a unitary proposal instead of a two-step conceptual/detailed proposal process; and

(2) Proposers are ranked and selected based on the qualifications of the major partners, major subcontractors and key persons, which would result in a predevelopment agreement being entered into that authorizes the proposer to fully develop a detailed proposal that would be evaluated pursuant to WAC 468-600-350.

(3) Nothing in this section, nor in these WAC rules, shall be construed to allow proposer conduct or participation in a project that would be prohibited under the Federal Highway Administration's *Conflict of Interest Guidelines*.

These examples are offered for illustrative purposes only, and should not be construed to limit the scope of the state's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of RCW 47.29.010 et seq.

#### NEW SECTION

**WAC 468-600-240 Contents and format of conceptual proposals.** Pursuant to RCW 47.29.170, unsolicited proposals are subject to a two-step process. The first step is to submit the conceptual proposal. If the concept is approved, the commission or department may ask for further information in the form of a fully detailed proposal, which constitutes



the second step. An unsolicited or competing conceptual proposal shall include at least the following information, unless waived by the department, separated by tabs as herein described:

**(1) TAB 1: Qualifications and experience.**

(a) Identify the legal structure of the private entity or consortium of private entities or of private and public entities (the "team") submitting the proposal. Identify the organizational structure of the team for the project, the team's management approach and how each major partner and major subcontractor identified as being a part of the team as of the date of submission of the proposal fits into the overall team.

(b) Describe the experience of each private entity involved in the proposed project. Describe the length of time in business, business experience, public sector transportation experience, PPP experience, development experience, design-build experience and other similarly sized engagements of each major partner and major subcontractor. The lead entity must be identified.

(c) Provide the names, addresses and telephone numbers of persons within the team who may be contacted for further information.

(d) Include the address, telephone number, and the name of a specific contact person at a public entity for which the private entity or the team or the primary members of the team have completed a development project, public-private partnership project or design-build project.

(e) Include the resumes for those managerial persons within the team that will likely be associated in a significant way with the project development and implementation.

(f) Provide financial information regarding the private entity or team and each major partner that includes, if available, the most recent independently audited financial statement of the private entity or team and of each major partner, and which demonstrates their ability to perform the work and project as set forth in the proposal, including ability to obtain appropriate payment and performance bonds.

(g) Submit executed disclosure forms, prescribed by the department, for the team, each major partner and any major subcontractor.

**(2) TAB 2: Project characteristics.**

(a) Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

(b) Provide a description of the eligible project or projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects.

(c) Describe the project in sufficient detail so the type and intent of the project, the general location of the project, and the communities that may be affected by the project are clearly identified. Describe the assumptions used in developing the project.

(d) List the critical factors for the project's success.

(e) If the proposed project does not conform with the state and regional transportation plans or regional plans, outline the proposer's approach for securing the project's conformity with, or indicate the steps required for, acceptance into such plans.

(f) When a proposed project is sited, in whole or in part, within the jurisdiction of a metropolitan planning organiza-

tion or area commission on transportation, identify applicable regional and local approvals required for the project.

(g) Provide an explanation of how the proposed transportation project would impact local transportation plans of each affected locality.

(h) Provide a list of public transportation facilities and major apparent public utility facilities that will be crossed or affected by the transportation project and a statement of the proposer's plans to accommodate such facilities.

(i) Describe the role the proposer anticipates the department will have in the development, construction, operation, maintenance, financing, or any other aspect of the eligible project.

**(3) TAB 3: Project financing.**

(a) Provide a projected budget for the project or scope of work based on proposer's prior experience on other scopes of work and projects or other cost projection factors and information.

(b) Include a list and discussion of assumptions (e.g., user fees, toll rates and usage of the facility) underlying all major elements of the plan for the project.

(c) Identify the proposed risk factors relating to the proposed project financing and methods for dealing with these factors.

(d) Identify any significant local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; the timing of any anticipated commitment; and its impact on project delivery.

(e) Identify any aspect of the financial model for the project that implicates or potentially implicates restrictions on the use of highway-related revenues under Article II, section 40 of the Washington Constitution (commonly known as the Motor Vehicle Trust Fund), and explain how the financial model avoids conflicting with those restrictions.

(f) Provide a conceptual estimate of the total cost of the transportation project.

**(4) TAB 4: Public support/project benefit/compatibility.**

(a) Identify who will benefit from the project, how they will benefit and how the project will benefit the overall transportation system.

(b) Identify any anticipated government support or opposition, or general public support or opposition, for the project.

(c) Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

(d) Describe the significant social and economic benefits of the project to the community, region or state and identify who will benefit from the project and how they will benefit. Identify any state benefits resulting from the project including the achievement of state transportation policies or other state goals.

(5) All pages of a conceptual proposal shall be numbered. Each copy of the proposal will be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(6) A conceptual proposal submitted by a private sector partner must be signed by an authorized representative of the private sector partner submitting the unsolicited conceptual proposal.

(7) The proposer shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under WAC 468-600-605.

#### NEW SECTION

**WAC 468-600-250 Contents and format of detailed proposals.** If the preliminary conceptual proposal is accepted, the commission or the department may request a detailed proposal. A detailed proposal shall include all information required in the conceptual proposal under WAC 468-600-240, with additional discussion, description and details, and with updates and refinements as necessary to keep the document most current. In addition, the following information must be included, unless waived by the department:

**(1) TAB 2: Project characteristics.**

(a) Provide a detailed description of the eligible project or projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects. Describe the project in sufficient detail so the type and intent of the project, the general location of the project, and the communities that may be affected by the project are clearly identified. Describe the assumptions used in developing the project.

(b) Identify any significant local, state or federal services or practical assistance that the proposer contemplates requesting for the project. In particular, identify and describe any significant services that will need to be performed by the department such as right of way acquisition or operation and maintenance of the completed project.

(c) Include a preliminary list of all significant federal, state, regional and local permits and approvals required for the project. Identify which, if any, permits or approvals are planned to be obtained by the department.

(d) List the critical factors for the project's success.

(e) Identify the proposed preliminary schedule for implementation of the project.

(f) Describe the assumptions related to ownership, law enforcement and operation of the project and any facility that is part of the project.

(g) Describe the payment and performance bonds, guarantees, letters of credit and other performance security, if any, that the proposer will provide for the project.

(h) Identify any public improvements that will be part of the proposed project that will constitute "public works" under RCW 47.29.020(5), the workers on which must be paid in accordance with Washington's prevailing rate of wage law, chapter 39.12 RCW, and any public improvements the workers on which must be paid in accordance with the federal Davis-Bacon Act, 40 U.S.C. sections 3141 to 3148.

**(2) TAB 3: Project financing.**

(a) Identify the form and amount of any private capital contribution and the entities that will make such capital contributions. If other forms of contribution are proposed, describe the nature of the contributions, the fair market value

(if applicable), and whether compensation for such contributions will be sought.

(b) If the proposal would provide for a state-granted franchise to a private concessionaire in exchange for financial consideration, provide the proposer's financial model and all capital costs, operating and maintenance costs (including reconstruction, resurfacing, restoration, and rehabilitation costs), revenues and other data and assumptions that comprise the base case financial model.

(c) Provide an explanation of how funds for the project will be segregated, accounted for and expended in a manner that ensures that any moneys protected under Article II, section 40 of the Washington Constitution be expended exclusively for the purposes authorized under that provision.

(d) Identify, to the extent possible, proposed financing team members, including banks, investment banks, equity investors, credit enhancement providers, bond trustees and legal counsel to the same.

**(3) TAB 5: Special deliverables.**

(a) Provide a statement setting out the plan for securing all necessary real property, including proposed timeline for any necessary acquisitions.

(b) Provide proposed design, construction and completion guarantees and warranties.

(c) Include traffic studies and/or forecasts and related materials that establish project revenue assumptions, including, if any, user fees or toll rates, and usage of the facility.

(d) Provide such additional material and information as the department may reasonably request.

(4) All pages of a proposal shall be numbered. Each copy of the proposal shall be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(5) A proposal submitted by a private sector partner must be signed by an authorized representative of the private sector partner submitting the proposal.

(6) The proposer shall clearly mark any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under RCW 47.29.190 and WAC 468-600-605. Any individual page containing material that the proposer considers proprietary must be stamped "proprietary."

### **REVIEW, EVALUATION AND SELECTION OF PROPOSALS**

#### NEW SECTION

**WAC 468-600-300 Additional disclosure requirements for proposers of solicited and unsolicited proposals.**

(1) In addition to the disclosure requirements of WAC 468-600-600, the department may impose, after the submission of a proposal, any other special disclosure requirements the department determines to be reasonably necessary to evaluate the expertise, experience, financial backing, integrity, ownership and control of any proposer.

(2) All proposers must provide all the information required by this rule and by the department. All proposers and key persons must complete and submit the required dis-

closure form within the deadlines set by the department. All proposers and key persons must provide any documents required in the disclosure process, or other documents as determined by the department, or their proposals may be rejected by the department.

(3) The department may reject, or require the supplementation of, a proposal if the proposer has not provided all information required in the disclosure form or if any information provided is not accurate, current or truthful. The failure or refusal of any proposer to properly execute, fully complete, or accurately report any information required by the required disclosure shall be sufficient grounds for rejection of the proposal.

(4) Any change in the status of the proposer, in the identity of any of the key persons, or the addition of any key persons must be reported to the department within thirty days of the known change, and those whose status has changed or who have been added as key persons will be required to submit the required disclosure information. For purposes of this section, a "change in the status of a proposer" means a reorganization of the business structure or corporate structure of the proposer or a major partner, or a change in ownership of the proposer or a major partner amounting to a transfer of over twenty percent of the entity's ownership.

(5) The burden of satisfying the department's disclosure requirements, both in terms of producing the disclosures and assuring their accuracy and completeness, resides with each proposer.

(6) Each proposer, by submitting a proposal, thereby accepts all risk of adverse public notice, damages, financial loss, criticism, harm to reputation or embarrassment that may result from any disclosure or publication of any material or information required or requested by the state in connection with the proposer's submission of a proposal. In submitting a proposal, the proposer expressly waives, on behalf of itself, its partners, joint venturers, officers, employees and agents, any claim against the secretary, the state of Washington, the commission, the department and their officers and employees, for any damages that may arise therefrom.

(7) A public entity that submits a proposal may, prior to submission, request the department to waive the disclosure requirements of this rule with respect to the corporate public entity and its officers. However, if the public entity proposes to enter into or establish a partnership or joint venture with a private sector partner to perform any substantial portion of the proposed project (as opposed to the engagement of only a prime contractor or subcontractors), then disclosure of the private party must be made as if the private party is a proposer, in accordance with this rule.

#### NEW SECTION

##### **WAC 468-600-305 Appointment of evaluation panel.**

The commission shall appoint and direct an evaluation panel to commence a review and evaluation process as directed in this section. At a minimum, the evaluation panel must consist of:

- (1) Department staff;
- (2) An independent representative of a consulting or contracting firm with no interests in the project, whose firm

would be precluded from participating in any part of the project;

- (3) An observer from the state auditor's office or the joint legislative audit and review committee;
- (4) A person appointed by the commission; and
- (5) A financial expert.

#### NEW SECTION

##### **WAC 468-600-310 Preliminary review of proposals.**

(1) For solicited proposals, after the close of the proposal period, the department will conduct a preliminary review and certify receipt of those submitted proposals that have met the following criteria:

- (a) The proposal is complete;
- (b) The proposal is responsive; and
- (c) The proposal meets any additional procedural or process requirements prescribed by the state.

Solicited proposals certified by the department under this subsection will be forwarded to the evaluation panel under WAC 468-600-305.

(2) Unsolicited conceptual proposals submitted under WAC 468-600-220 will be reviewed by the evaluation panel, as created and assembled under WAC 468-600-305. The evaluation panel will initially determine whether the conceptual proposal is eligible for evaluation pursuant to WAC 468-600-200 (state's authority to accept unsolicited proposals—Moratorium); WAC 468-600-210 (Projects eligible for unsolicited proposals) and WAC 468-600-215 (department's management of unsolicited proposals). If not, the evaluation panel will not proceed further with its evaluation and the department may return the proposal to the proposer. If the conceptual proposal is eligible for evaluation, the evaluation panel will assess:

- (a) Whether the proposal is complete;
- (b) Whether the proposer appears qualified;
- (c) Whether the proposal appears to satisfy the requirements of WAC 468-600-240;
- (d) Whether the project as proposed appears to be technically and financially feasible;
- (e) Whether the project as proposed appears to have the potential of enhancing the state transportation system; and
- (f) Whether the project as proposed appears to be in the public interest.

(3) The evaluation panel will report the results of its evaluation and its recommendation to the commission. The recommendation will not include sensitive business, commercial or financial information or trade secrets as described in WAC 468-600-605.

#### NEW SECTION

##### **WAC 468-600-315 Commission review of unsolicited conceptual proposals.**

Following an assessment by the evaluation panel that an unsolicited conceptual proposal merits further review, the commission will review the recommendation and approve or disapprove the proposal for further evaluation and action by the state. If approved for further review, the commission shall direct the proposer to prepare a detailed proposal pursuant to WAC 468-600-250.

NEW SECTION

**WAC 468-600-320 Competing proposals.** (1) If the commission grants approval of a conceptual proposal for further evaluation and review, within thirty days of the commission's approval the department shall provide public notice of the proposed project. This notice shall:

(a) Be published in a newspaper of general circulation and upon such electronic web site providing for general public access as the department may develop for such purpose;

(b) Be provided to any county, city, metropolitan service district, or transportation district in which the project will be located;

(c) Be provided to any person or entity that expresses in writing to the department an interest in the subject matter of the unsolicited conceptual proposal and to any member of the legislature whose house or senate district would be affected by such proposal;

(d) Outline the general nature and scope of the unsolicited conceptual proposal, including the location of the transportation project and the work to be performed on the project; and

(e) Specify the address to which any competing conceptual proposal must be submitted.

(2) The department may also elect to deliver such notice directly to any person or entity the department believes may have an interest in submitting a competing conceptual proposal.

(3) Any entity that elects to submit a competing conceptual proposal for the proposed project shall submit a written letter of intent to do so not later than thirty calendar days after the department's initial publication of notice. Any letter of intent received by the department after the expiration of the thirty-day period shall not be valid and any competing conceptual proposal submitted thereafter by a private or governmental entity that has not submitted a timely letter of intent shall not be considered by the department.

(4) An entity that has submitted a timely letter of intent must submit its competing conceptual proposal to the department not later than one hundred twenty calendar days after the department's initial publication of notice under subsection (1) of this section, or such other time as the department provides in the notice. The competing conceptual proposal must:

(a) Be signed by an authorized representative of the proposer;

(b) Be accompanied by the processing fee for conceptual proposals required under WAC 468-600-230; and

(c) Include the information and be organized in the manner required of an unsolicited conceptual proposal under WAC 468-600-240.

(5) Any competing conceptual proposal that is received within the time provided in subsection (4) of this section must be forwarded to the evaluation panel as provided in WAC 468-600-310. The panel must:

(a) Evaluate the competing conceptual proposal under the criteria specified in WAC 468-600-310; and

(b) Determine whether the competing proposal(s) differ from the original unsolicited conceptual proposal in such a significant and meaningful manner that they should be treated as an original unsolicited conceptual proposal. If the

evaluation panel believes that a proposal submitted as a competing proposal should be treated as an original unsolicited conceptual proposal and that it satisfies the requirements of WAC 468-600-240, the evaluation panel shall forward the proposal to the commission for preliminary review and approval under WAC 468-600-315, and the proposal shall thereafter be processed under these rules in the same manner as an unsolicited conceptual proposal. If the competing conceptual proposal is not to be treated as an original unsolicited conceptual proposal, the competing conceptual proposal will be reviewed by the evaluation panel as provided in WAC 468-600-330 through 468-600-350.

NEW SECTION

**WAC 468-600-330 Proposal evaluation factors and criteria.** For solicited proposals, the evaluation panel shall assess the certified proposals based on the unique project-specific evaluation criteria identified in the solicitation documents, including any written amendments or clarifications thereto, and upon any other factors the panel believes is necessary to ensure a successful project that benefits the public interest.

For unsolicited and competing proposals, the evaluation panel must consider the following factors:

(1) **Qualifications and experience.** Has the proposer created a team that is qualified, managed, and structured in a manner that will enable the team to complete the proposed project and perform the proposed scope of work?

(a) **Experience with similar infrastructure projects.** Have members of this team previously worked together or in a substantially similar consortium or partnership arrangement constructing, improving, operating, maintaining or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar public-private partnership project?

(b) **Demonstration of ability to perform work.** Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project and perform the proposed scope of work? Do the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?

(c) **Leadership structure.** Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there an agreement/document in place between members?

(d) **Project manager's experience.** Is a project manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the project manager relative to the member firms? Does the project manager have experience leading this type and magnitude of project?

(e) **Management approach.** Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the state?

(f) **Financial condition.** Is the financial information submitted on the forms sufficient to determine the firms' capability to fulfill its obligations described in the project proposal, and is that capability demonstrated by the submitted information?

(g) **Project ownership.** Does the proposal identify the proposed ownership arrangements for each phase of the project and clearly state assumptions on legal liabilities and responsibilities during each phase of the project?

(h) **Competitive subcontracting.** To what extent have adequate procurement policies been adopted by the proposer to ensure opportunities for competitive procurement of work, services, materials and supplies that the proposer will subcontract?

(2) **Project characteristics.** Is the proposed project technically feasible?

(a) **Project definition.** Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g., alignments) that may need to be evaluated?

(b) **Proposed project schedule.** Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project?

(c) **Quality management.** Does the proposer present a quality management plan, including quality control and quality assurance processes, that are good industry practice and are likely to result in delivery of a project and services that meet the department's standards and comply with contract requirements?

(d) **Operation.** Does the proposer present a reasonable statement setting forth plans for operation of the project or facilities that are included in the project?

(e) **Technology.** Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed project upgrade relevant local technology?

(f) **Conforms to laws, regulations, and standards.** Is the proposed project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet applicable state and federal standards?

(g) **Federal permits.** Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? Does the proposal identify the primary federal permits and agencies that will be involved in review and oversight of the project?

(h) **Meets/exceeds environmental standards.** Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet applicable state environmental standards? Does the proposal adequately address air quality issues?

(i) **State and local permits.** Does the proposal list the required permits and provide a schedule for obtaining them? Are there known or foreseeable negative impacts arising from the project? If so, does the proposal outline a plan to address those negative impacts? Are alternatives to standards or regulations needed to avoid those impacts that cannot be addressed?

(j) **Right of way.** Does the proposal set forth a method or plan to secure all property interests required for the transportation project?

(k) **Maintenance.** Does the proposer have a plan to maintain any facilities that are part of the proposed transportation project in conformance with department standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection and maintenance? Under the proposal, will maintenance and operation of any new facilities be consistent with standards applied throughout the highway system and use the same work forces and methods?

(3) **Project financing.** Has the proposer provided a financial plan that allows access to the necessary capital to make a substantial contribution of nonstate, private sector, or other innovative financing resources to the financing of the facility or project?

(a) **Financing.** Did the proposer demonstrate evidence of its experience, ability and commitment to provide a sufficient private-sector contribution or other innovative financing contribution of funds or resources to the project as well as the ability to obtain the other necessary financing?

(b) **Conformance with RCW 47.29.060.** Does the proposed financing plan conform to any requirements of state-issued debt under RCW 47.29.060? If the proposed financing plan is not in conformance, has the proposer committed to seeking any necessary legislative or other state approvals in order to proceed with the financing plan as proposed?

(c) **Financial plan.** Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Is the proposer willing to place private capital at risk in order to successfully deliver the project? Does the proposer adequately identify sources of nonstate funding that it anticipates including in the project financing, and does the proposer provide adequate assurance of the availability of those funds and the reliability of the funding sources?

(d) **Estimated cost.** Is the estimated cost of the project reasonable in relation to the cost of similar projects?

(e) **Life-cycle cost analysis.** Does the proposal include an appropriately conducted life-cycle cost estimate of the proposed project and/or facility? How does the life-cycle cost impact the projected rate of return?

(f) **Financial model.** If the procurement is for a concession agreement, does the proposal present a sound base case financial model? Are the assumptions in the financial model reasonable and realistic?

(g) **Business objective.** Does the proposer clearly articulate its reasons for pursuing this project? Do its assumptions appear reasonable?

(4) **Public support.** Has the proposer demonstrated sufficient public support for the proposed project or proposed a reasonable plan for garnering that support?

(a) **Community benefits.** Will this project bring a significant transportation and economic benefit to the community, the region, and/or the state? Are there ancillary benefits to the communities because of the project?

(b) **Community support.** What is the extent of known support or opposition for the project? Does the project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community? Have affected local jurisdictions expressed support for the project?

(c) **Public involvement strategy.** What strategies are proposed to involve local and state elected officials in developing this project? What level of community involvement is contemplated for the project? Has the proposer articulated a clear strategy for informing and educating the public and for obtaining community input throughout the development and life of the project?

(5) **Project compatibility.** Is the proposed project compatible with, or can it be made compatible with state and local comprehensive transportation plans?

(a) **Compatibility with the existing transportation system.** Does this project propose improvements that are compatible with, or that can be made compatible with, the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

(b) **Fulfills policies and goals.** Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Does the project improve connections among the transportation modes?

(c) **Conformity with local, regional and state transportation plans.** Does the project conform with, or can it achieve conformity with, city and county comprehensive plans and regional transportation plans? Does the project conform with, or can it achieve conformity with, plans developed by the commission and any applicable regional transportation plans or local transportation programs? If not, are the steps proposed in the proposal to achieve conformity with such plans adequate and appropriate to provide a high likelihood that the project and the applicable plans can be brought into conformity?

(d) **Economic development.** Will the proposed project enhance the state's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?

#### NEW SECTION

**WAC 468-600-331 Factors for proposals that include tolling.** If the project financing component of a proposal includes a plan to impose tolls, the evaluation panel shall specifically consider:

(1) The opinions and interests of units of government encompassing or adjacent to the path of the proposed tollway project in having the tollway installed;

(2) The potential impact of the proposed tollway project on local environmental, aesthetic and economic conditions and on the economy of the state in general;

(3) The extent to which funding other than state funding is available for the proposed tollway project and the extent to which resources other than tolls would be required to be established and/or maintained as necessary security to support such a financing;

(4) The likelihood that the estimated use of the tollway project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the tollway project, including the repayment of any loans to be made from monies in the transportation innovative partnerships account created under RCW 47.29.230 or other accounts;

(5) With respect to tollway projects, any portion of which will be financed with state funds or department loans or grants:

(a) The relative importance of the proposed tollway project compared to other proposed tollways; and

(b) Traffic congestion and economic conditions in the communities that will be affected by competing tollway projects; and

(6) The effects of tollway implementation on other major highways in the state system and on community and local street traffic.

#### NEW SECTION

**WAC 468-600-340 Proposer presentations.** At any time during the evaluation process, the evaluation panel may request proposers to make presentations to the panel. Proposers shall be afforded not less than ten business days following written notification from the panel to prepare such presentations. The format of these presentations will include a formal presentation by the proposer, followed by any questions the evaluation panel may have pertaining to the project proposal or the presentation. These meetings will allow the evaluation panel to seek clarification of project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the evaluation panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

#### NEW SECTION

**WAC 468-600-345 Required supplements or refinements to proposals.** (1) The department reserves the right to require or to permit proposers to submit, at any time, revisions, clarifications to, or supplements of their previously submitted proposals. The department may, in the exercise of this authority, require proposers to add features, concepts, elements, information or explanations that were not included in their initial proposals, and may require them to delete features, concepts, elements, information or explanations that were included in their initial proposals. A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, concept, element or information, but its refusal to do so in response to a request by the department

shall constitute sufficient grounds for the department to elect to terminate consideration of its proposal.

(2) After the department's opening and review of proposals, the department may issue or electronically post an addendum to the request for proposals that:

(a) Requires proposers to address or add physical features or elements, and information or explanations that were not included in their initial proposals; or

(b) Requires proposers to delete physical features or elements that were included in their initial proposals; or

(c) Change the method by which the department will send any such addendum that it issues by a method other than electronic posting to all proposers to continue in the proposal process; or

(d) Any addendum issued will contain a deadline by which the proposers must submit to the department any additions to, modifications of or deletions from their proposals.

#### NEW SECTION

**WAC 468-600-350 Evaluation panel recommendation to commission.** (1) After reviewing the proposals and hearing presentations from proposers, the evaluation panel will prepare a written determination, based on facts and circumstances presented in the proposals and the presentations, that one or more proposals merit selection and advancement into a contract negotiation phase or to contract execution. In its written determination regarding any proposal, the evaluation panel may specify conditions that it recommends the proposer be required to satisfy before proceeding to contract negotiations. By way of example, such conditions may include, but are not limited to:

(a) Requiring the proposer to provide additional information or clarification concerning elements or parts of its proposal;

(b) Requiring the proposer to develop and submit additional information confirming the technical feasibility of the proposed project;

(c) Requiring the proposer to develop and submit additional information confirming that the proposed project complies with or can be brought into compliance with relevant local and state transportation plans, restrictions on property use, and environmental laws, or that the project and the applicable plans, restrictions and environmental laws can otherwise be brought into conformity;

(d) Requiring the proposer to commit in writing to the department to undertake good faith efforts to modify or adjust the proposal in specific ways, or to incorporate steps, characteristics or features that the department identifies as necessary or desirable to enhance the feasibility, public acceptance, transportation efficiency, or economy in execution or operation, of the project;

(e) Otherwise requiring the proposer to develop and present revisions to, or alternatives within, the proposal that will permit the department to obtain best value based on the requirements and evaluation criteria set forth in the notice or request for proposals and based on knowledge obtained by the department by virtue of its review and evaluation of the proposals; and

(f) Requiring the proposer to enter into an interim agreement, on terms satisfactory to the proposer and the state, under which the proposer will provide services to the department in connection with the development of the proposal or further development of the project, including assistance to the department in obtaining any necessary regulatory approvals.

(2) The evaluation panel will report its assessments and recommendations to the commission.

#### NEW SECTION

**WAC 468-600-355 Commission review and selection of proposals.** The commission shall review the proposals, the assessments and the recommendations of the evaluation panel. Based on that review, the commission may:

(1) Select one proposal to advance to execution of a contract or development agreement; or

(2) Select one proposal to advance to negotiations of a contract or development agreement; or

(3) Select one proposal to advance to execution or negotiations of a contract or development agreement, subject to the proposer's willingness and ability to satisfy specified conditions; or

(4) Pursuant to WAC 468-600-360, select more than one proposal from which to conduct competitive negotiations; or to continue competitive negotiations for a specified period of time; or

(5) Reject all proposals. For purposes of this section, competitive negotiations means negotiations authorized under WAC 468-600-360, for the purposes of refining and arriving at a final selection of a proposer. This term does not refer to negotiations for a contract or development agreement as provided in WAC 468-600-710.

#### NEW SECTION

**WAC 468-600-360 Commission's authority to elect competitive negotiations.** (1) In addition to the commission's ability to exercise any alternative process permitted under WAC 468-600-232, the commission may authorize, at its option, competitive negotiations with more than a single proposer as a means of selecting from among competing proposals submitted under these rules.

Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a project agreement.

(2) The commission may announce its election to conduct competitive negotiations:

(a) In any notice issued for solicited proposals under WAC 468-600-105; or

(b) By written notice, by mail or by electronic means, to the proposers, issued at any time following the state's receipt of proposals under WAC 468-600-220.

(3) In any communication under subsection (2) of this section, or by notice to the proposers issued by mail or by electronic means at any time after the receipt of proposals, the commission may announce that it will initiate competitive negotiations with all proposers who submitted responsive proposals, or only with proposers who qualify to negotiate because the state has determined that their proposals fall within a competitive range.

(4) When the commission elects to negotiate only with proposers within a competitive range, then after the evaluation panel's evaluation of proposals in accordance with the criteria set forth in the notice or request for proposals, the commission will determine the proposers in the competitive range.

(a) For purposes of this subsection (4), the proposers in the competitive range consist of those proposers whose proposals, as determined by the commission in its discretion, have a reasonable chance of being determined the best proposal as the result of the evaluations conducted by the evaluation panel under WAC 468-600-350. In determining which proposals fall within the competitive range, the commission may consider whether its preliminary evaluation of proposals establishes a natural break in the preliminary scores of the proposals that suggests those proposals that are sufficiently competitive to be included in the competitive range.

(b) The department will provide written notice to all proposers, by mail or by electronic means, of the proposals the commission determines to fall within the competitive range. A proposer whose proposal is not within the competitive range may submit a written protest of the commission's evaluation and determination of the competitive range within fourteen calendar days after the date of the department's notice. A proposer's written protest must state facts and argument that demonstrate how the competitive range determination was flawed or how the commission's determination constituted an abuse of discretion. If the department receives no written protest concerning the proposed selection listing within the fourteen calendar day period, then the department will proceed with negotiations with the proposers whose proposals fell within the competitive range.

(c) In response to a timely filed protest, the commission will issue a written decision that resolves the issues raised in the protest. The commission will make its written determination available, by mail or by electronic means, to the protesting proposer and to the proposers falling within the competitive range.

(5) The object of competitive negotiations, which the department may conduct concurrently with more than one proposer or serially, is to maximize the state's ability to obtain best value and to permit proposers to develop revised proposals. Therefore, the negotiations may include, but shall not be limited to:

(a) Informing proposers of deficiencies in their proposals;

(b) Notifying proposers of parts of their proposals for which the department would like additional information; and

(c) Otherwise allowing proposers to develop revised proposals that will permit the state to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request for proposals.

(6) The scope, manner and extent of negotiations with any proposer are subject to the discretion of the department. To prevent the disclosure of proposal information to a proposer's competitors, the department shall conduct negotiations with proposers before the nature of the proposals, information about the proposed project, or proposal information have been made public under WAC 468-600-600. In conducting negotiations, the department:

(a) Shall treat all proposers fairly and shall not engage in conduct that favors any proposer over another;

(b) Shall not reveal to another proposer a proposer's unique technology, unique or innovative approaches to project design, management or financing, or any information that would compromise the proposer's intellectual property, trade secrets or sensitive business information; or

(c) Shall not reveal to another proposer a proposer's price or pricing information, provided, however, that the department may inform a proposer that the department considers a proposer's price or pricing information to be too high or too low.

(7) The evaluation panel must further evaluate the proposals subjected to the competitive negotiation process, and recommendations to the commission for their action under WAC 468-600-355.

#### NEW SECTION

**WAC 468-600-365 Protests of rejection of proposal/award of contract to competitor in competing proposals context.** (1) At least fourteen calendar days prior to the final selection of the successful proposer in any competitive proposal selection process, the department will give, electronically or otherwise, written notice to all participating proposers of the commission's apparent selection of the successful proposer. A proposer who would be adversely affected by the selection announced in the notice may, within fourteen calendar days after the date of the department's notice, submit to the department a written protest of the selection of the apparent successful proposer.

(2) For purposes of this rule, a protesting proposer is adversely affected by a selection only if the proposer has submitted a responsive competing proposal and is next-in-line for selection. In other words, the protesting proposer must demonstrate that all higher-scoring proposers are ineligible for selection because either:

(a) The higher-scoring proposals were not responsive to the requirements stated in the department's solicitation documents; or

(b) The department committed a substantial violation of a provision in the department's notice requesting competitive negotiation, in these rules, or in chapter 47.29 RCW, or otherwise abused its discretion, in evaluating the revised proposals.

(3) A proposer's written protest must state facts and argument that demonstrate how the selection process was flawed or how the commission's selection of the apparent successful proposer constituted an abuse of the commission's discretion. If the commission receives no written protest concerning the proposed selection listing within the fourteen-day period, then the selection of the successful proposer automatically shall become effective on the fifteenth calendar day after the department first transmitted or otherwise delivered its written notice of the apparent successful proposer.

(4) In response to a proposer's timely filed protest that complies with this rule, the commission will issue a written decision that resolves the issues raised in the protest. In considering a timely protest, the commission may request further information from the protesting proposer and from the appar-



ent successful proposer identified in the department's notice issued under subsection (1) of this section. The commission will make its written determination available, by mail or by electronic means, to the protesting proposer and to the apparent successful proposer identified in the department's notice issued under subsection (1) of this section.

#### NEW SECTION

**WAC 468-600-370 Notification of apparent successful proposer—Prenegotiation activities authorized.** (1) Upon the commission's selection of a proposal under WAC 468-600-355 and upon expiration of the protest period, the department shall notify the proposer of its intent to execute a contract or development agreement or to enter negotiations on a contract and/or development agreement.

(2) Upon the commission's provisional selection of a proposal subject to satisfaction of conditions, and upon expiration of the protest period, the department shall notify the proposer of the conditions. The proposer shall have a period of time, set forth in the department's notice, but to be at least ten calendar days, from receipt of the department's notification to elect to proceed under specified conditions. If the proposer elects to proceed, the department shall work with the proposer to develop a plan for satisfying the conditions. If the plan entails entry into an interim agreement, the agreement will conform to all relevant requirements of chapter 47.29 RCW and these rules.

(3) After the commission's selection or provisional selection of a proposal, the department and the proposer may confer on any matter pertinent to refinement of the proposal.

#### NEW SECTION

**WAC 468-600-600 Public records and public disclosure.** (1) Upon written request and within the time required under chapter 42.56 RCW, the department shall review such requests, process and provide those records that are not otherwise exempt from disclosure. The department may charge fees as allowed by state law.

(2) On the department's receipt of a request pursuant to chapter 42.56 RCW, for the disclosure of records or information that have been submitted to the department by a proposer under the program authorized by chapter 47.29 RCW, the department will notify the proposer of the request and provide the proposer a reasonable opportunity to demonstrate that all or part of the requested records or information are exempt from disclosure under applicable law recognizing the confidentiality of public records and information. In determining whether the information or records are exempt from disclosure, the department will consider the evidence and objections to disclosure presented by the proposer, but as custodian of the records or information, the department must make the initial determination of the records that may be withheld from disclosure.

(3) An affected proposer who seeks to demonstrate that public records pertaining to it are exempt from disclosure must respond to the department with its evidence and objections within four working days of the department's issuance of notice of the request to the proposer. After considering the proposer's evidence and objections, the department will

inform the proposer of its disclosure decision, giving the proposer no fewer than three working days in which to institute appropriate proceedings in its own behalf to protect the proposer's interests in preventing the disclosure or maintaining the confidentiality of the records or information. The proposer shall be exclusively responsible for all costs, expenses and attorney fees incurred in taking any action to prevent the disclosure of information or records under this section. The department shall not make a disclosure of records or information while an action by the proposer to enjoin disclosure thereof is pending.

#### NEW SECTION

**WAC 468-600-605 Designation of sensitive business, commercial or financial information and trade secrets.**

(1) The following procedure shall be followed by proposers to designate information as "sensitive business, commercial or financial information" under RCW 47.29.190: Each individual page of a proposal that contains sensitive business, commercial or financial information must be clearly marked "sensitive business, commercial or financial information."

(2) A proposer may desire that certain information be considered "trade secret" information for purposes of applying the public records exemption set out in state law. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. To qualify for that exemption, trade secret information must meet the following criteria:

- (a) Not be the subject of a patent;
- (b) Be known only to a limited number of individuals within an organization;
- (c) Be used in a business that the organization conducts;
- (d) Be of potential or actual commercial value; and
- (e) Be capable of providing the user with a business advantage over competitors not having the information.

(3) The following procedures shall be followed by the proposer to designate information as trade secret:

(a) Each individual page of a proposal, plan or progress report that contains trade secret information must be clearly marked trade secret;

(b) Written substantiation describing what information is considered trade secret and why, must accompany the document. The written substantiation shall address the following:

- (i) Identify which portions of information are claimed trade secret;
- (ii) Identify how long confidential treatment is desired for this information;
- (iii) Identify any pertinent patent information;
- (iv) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others;
- (v) Describe the nature of the use of the information in business;

(vi) Describe why the information is considered to be commercially valuable;

(vii) Describe how the information provides a business advantage over competitors;

(viii) If any of the information has been provided to other government agencies, identify which one(s); and

(ix) Include any other information that supports a claim of trade secret.

(4) Notwithstanding a proposer's designation of information as constituting "trade secret," and subject to a proposer's opportunity to object to disclosure under WAC 468-600-605, the department may independently assess whether the trade secret exemption applies when responding to a public records request.

### AGREEMENTS FOR PROJECTS

#### NEW SECTION

**WAC 468-600-700 General preconditions for entering into agreements.** The following are preconditions of any agreement that will be entered into between the state and a private sector partner:

(1) The department must seek to adopt contracting techniques that represent the best practices in use by owners of facilities;

(2) To the extent permitted by law, protection must be provided for local contractors to participate in any subcontracting opportunities on projects;

(3) Projects that use tolling technology must maintain standards that are consistent with any standards adopted or widely used by the state;

(4) Provision must be made for patrolling and law enforcement on state-owned transportation facilities, as approved by the Washington state patrol for facilities within their jurisdiction;

(5) Any debt to be issued to pay for the construction of a state-owned transportation facility that is secured by public funds must conform to RCW 47.29.060, or if not in conformance, any agreements reached must be conditioned upon obtaining necessary legislative approval of alternative financing provisions;

(6) The public involvement plan must provide that all forums, workshops, open houses or public meetings be administered and attended by the public sector partner; and

(7) Any project with a capital cost in excess of three hundred million dollars must establish an advisory committee, consisting of at least five but not more than nine members, who shall be appointed by the commission.

#### NEW SECTION

**WAC 468-600-710 Negotiation of agreement.** A proposal or proposals selected by the commission for negotiation of a final agreement shall be referred to a negotiation team within the department. The team shall be responsible for negotiating the final agreement with the proposer. Each final agreement will define the rights and obligations of the state and the respective proposer with regard to the project. Agreements must contain all provisions in WAC 468-600-

700 and 468-600-715, and must allocate responsibilities under WAC 468-600-720.

#### NEW SECTION

##### **WAC 468-600-715 Mandatory terms of agreements.**

Any final agreement must include the following provisions:

(1) If public moneys are used to pay any costs of construction of public works that is part of an eligible project, the construction contract shall contain provisions that require payment of workers under the contract in accordance with chapter 39.12 RCW; and

(2) Any maintenance provisions on a public facility must be provided in a manner consistent with collective bargaining agreements, the Personnel Reform Act, and civil service laws in effect on any portion of the project that constitutes a public facility.

#### NEW SECTION

**WAC 468-600-720 Terms to be negotiated between the parties.** Any final agreement must contain terms that address at least the following issues:

(1) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(2) How the partners will share management of the risks of the project;

(3) How the partners will share the costs of development of the project;

(4) How the partners will allocate financial responsibility for cost overruns;

(5) The consequences for nonperformance;

(6) The incentives for performance;

(7) The invoicing and payment procedures and schedules to be followed to the extent that the department or state is to pay for the work, and the accounting and auditing standards to be used to evaluate work on the project; and

(8) An agreement for the construction of a public improvement as part of an eligible project shall provide and be approved for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project. Furthermore, the department shall determine that adequate security exists to address any default or nonperformance by the private sector partner or other contractual claims of the department against the proposer; and

(9) For projects that revert to public ownership, responsibilities for reconstruction or renovation that bring the facility up to government standards before reversion to the state.

#### NEW SECTION

##### **WAC 468-600-722 State objection to subcontractors.**

(1) Prior to the execution of any contract with a proposer, the proposer must provide the department with a list of all major subcontractors who will perform work in the construction, operation or maintenance of the project. All subcontractors must be legally eligible to perform or work on public contracts under federal and Washington law and regulations. No

subcontractor will be accepted who is ineligible to receive public works contracts in the state of Washington.

(2) If the department has reasonable objection to any proposed subcontractor, the department is authorized to require, before the execution of a contract, an apparently successful proposer to submit an acceptable substitute. In such case, the proposer must submit an acceptable substitute, and the contract may, at the department's discretion, be modified to equitably account for any difference in cost necessitated by the substitution. The department will set a maximum time period from the date of the department's written demand for substitution within which to make an acceptable substitution. A proposer's failure to make an acceptable substitution at the end of the time period will constitute sufficient grounds for the department to refuse to execute a contract, without incurring any liability for the refusal. In setting a maximum time period, the department shall consider the scope of the subcontract, availability of other subcontractors, and whether the disapproved subcontractor is identified in the proposal as an equity contributor or source of other financial support to the project relied on by the proposer. Following such identification, the proposer shall be granted an additional maximum time period as determined by the department to conclude negotiations of acceptable terms and conditions with that substitute major subcontractor.

(3) The department may not require any proposer to engage any subcontractor, supplier, other person or organization against whom the proposer has reasonable objection.

#### NEW SECTION

**WAC 468-600-725 Cessation of negotiations.** The department must establish a maximum time period allowed for conducting negotiations on a potential project or development agreement(s). Such time period may be established in the solicitation document described in WAC 468-600-105, or as a condition of selecting a particular proposer or proposers. If the department elects to conduct competitive negotiations under WAC 468-600-360, any deadline established for conducting negotiations must be equitably applied to all proposers engaged in negotiations. The department may extend a maximum negotiating time period if it determines extension to be in the interests of the state.

#### NEW SECTION

**WAC 468-600-730 Legal sufficiency review of final agreement.** On completion of a final agreement, the attorney general will review it for legal sufficiency. The department and the transportation commission are wholly responsible for exercising business judgment, including the appropriate and desirable allocation of risk and incentive in any agreement.

#### NEW SECTION

**WAC 468-600-735 Commission analysis required.** Before any agreements are executed, the commission must:

(1) Conduct a financial analysis that fully discloses all costs and cost estimates, including the costs of any financing, and all estimated project revenues; and

(2) Compare the department's internal ability to complete the project that documents the advantages of completing the project as a public-private partnership versus solely as a public venture.

The commission may undertake this analysis at any point in the solicited or unsolicited proposal process.

#### NEW SECTION

**WAC 468-600-740 Publication of contents of proposed agreement.** If a tentative agreement has been reached, before the commission may take any action on such agreement, an executive summary describing all material elements of the agreement must be prepared and made available to the public. The department must publish notice of existence of the agreement in each county that is, or could potentially be, affected by the project. The published notice must generally describe the nature of the project, the anticipated communities that the project might impact, and how summary level information on the proposed agreement can be obtained. Such notice must be provided not less than twenty calendar days before the public hearing required under WAC 468-600-741.

#### NEW SECTION

**WAC 468-600-741 Public hearings on proposed project and agreement.** Prior to taking action on any tentative agreement, the commission must hold an informational session and public hearing in the county seat of the boundaries of the proposed project with at least twenty calendar days' advance notice. Notice of such meeting may be provided in conjunction with the publication of the notice under WAC 468-600-740.

#### NEW SECTION

**WAC 468-600-742 Twenty-day period for consideration and evaluation of public comments.** After holding the public hearing required in WAC 468-600-741, the commission must consider any testimony received, and must wait at least twenty calendar days before taking any action approving, rejecting or directing execution or continued negotiations of the agreement.

#### NEW SECTION

**WAC 468-600-750 Commission review of final agreement.** On completion of the attorney general's legal sufficiency review of the final agreement, and after considering any public comment received, the commission shall:

- (1) Approve the final agreement;
- (2) Reject the final agreement; or
- (3) Return the final agreement to the team for further negotiation on issues the commission specifies.

**TRANSPORTATION INNOVATIVE PARTNERSHIP  
PROGRAM ADMINISTRATION**

NEW SECTION

**WAC 468-600-800 Program expenses attributable to projects.** The department shall confer with its internal auditor and accounting staff to adopt a methodology to properly apportion program and project development expenses to the specific projects that are the subject of an agreement executed under WAC 468-600-750. The department shall forward the methodology for properly allocating program expenses to the office of financial management for review and approval.

NEW SECTION

**WAC 468-600-810 State's reservation of rights.** (1) The state reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to:

- (a) Reject any and all proposals at any time;
  - (b) Terminate evaluation of any and all proposals at any time;
  - (c) Suspend, discontinue and/or terminate comprehensive agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;
  - (d) Negotiate with a proposer without being bound by any provision in its proposal;
  - (e) Request or obtain additional information about any proposals;
  - (f) Issue addenda to and/or cancel any RFQ or RFP;
  - (g) In accordance with the rule-making procedures of chapter 34.05 RCW, supplement or withdraw all or any part of these rules;
  - (h) Decline to return any and all fees required to be paid by proposers hereunder; and
  - (i) Request revisions to proposals.
- (2) Absent express written provisions contained in any solicitation document, order or written policy issued by the department, the department is not liable for, or required to, reimburse the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the department makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind.

**WSR 07-04-098  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Children's Administration)**

[Filed February 6, 2007, 3:33 p.m., effective March 9, 2007]

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

Purpose: The amendment (a) clarifies confidentiality requirements for emergency domestic violence shelter programs and incorporates federal and state legislative requirements; (b) clarifies fire safety requirements for emergency

domestic violence shelter homes; and (3) repeals appeal rights because dispute remedies for contractors are incorporated in the contract for services. This rule change includes the amendment and repeal of sections in chapter 388-61A WAC as well as the adoption of new WAC 388-61A-0146, 388-61A-0147, 388-61A-0148, and 388-61A-0149.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-61A-0185, 388-61A-0190 and 388-61A-0195; and amending WAC 388-61A-0025 and 388-61A-0135.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Other Authority: Chapter 259, Laws of 2006 (ESHB 2848), and federal PL 109-162.

Adopted under notice filed as WSR 06-22-077 on October 31, 2006.

Changes Other than Editing from Proposed to Adopted Version: In response to comments on the proposed rules, the department made an addition to WAC 388-61A-0147 (1)(e): "Release of information is otherwise required by law or court order, or following in-camera review pursuant to RCW 70.123.075, with the following additional requirements:"

A final cost-benefit analysis is available by contacting Susan Hannibal, 4045 Delridge Way S.W., Room 200, Seattle, WA 98106, phone (206) 923-4910, fax (206) 923-4899, e-mail hsus300@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 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 1, Amended 1, 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 4, Amended 2, Repealed 3.

Date Adopted: February 6, 2007.

Robin Arnold-Williams  
Secretary

AMENDATORY SECTION (Amending WSR 01-07-053, filed 3/16/01, effective 4/16/01)

**WAC 388-61A-0025 What definitions apply to domestic violence shelters and services? "Advocacy-based counseling"** means that the client is involved with an advocate counselor in individual, family, or group sessions with the primary focus on safety planning, empowerment, and education of the client through reinforcing the client's autonomy and self-determination.

**"Advocate counselor"** means a trained staff person who works in a domestic violence service and provides advocacy-based counseling, counseling, and supportive temporary shelter services to clients.

**"Client"** means a victim of domestic violence or dependent child of the victim.

**"Cohabitant"** means a person who is married or is living with a person as a husband or wife at the present time or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or have lived together at any time, is considered a cohabitant.

**"Confidential communication"** means all information, oral, written or nonverbal, transmitted between a victim of domestic violence and a domestic violence advocate counselor in the course of their relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person.

**"Confidential information"** includes, but is not limited to, any information, advice, notes, reports, statistical data, memoranda, working papers, records or the like, made or given during the relationship between a victim of domestic violence and a domestic violence advocate counselor, however maintained. Confidential information specifically includes the name, address, telephone number, social security number, date of birth, nine-digit ZIP code, and other personally identifying information, physical appearance of, and case file or history of, any victim of domestic violence who seeks or has received services from a domestic violence advocate counselor or domestic violence service.

**"Department"** means the department of social and health services (DSHS).

**"Domestic violence"** includes, but is not limited to, the criminal offenses defined in RCW 10.99.020 when committed by one cohabitant against another.

**"Domestic violence service"** means an agency that provides shelter, advocacy, and counseling for domestic violence clients in a safe, supportive environment.

**"Lodging unit"** means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

**"Personally identifying information"** includes, but is not limited to, first and last name, home or other physical address, telephone number, social security number, date of birth, nine-digit ZIP code, and other personally identifying information, physical appearance of, and case file or history of, any victim of domestic violence who seeks or has received services from a domestic violence advocate counselor or domestic violence service, or such other information which, taken individually or together with other identifying information, could identify a particular individual.

**"Program"** means the DSHS domestic violence program.

**"Safe home"** means a shelter that has two or less lodging units and has a written working agreement with a domestic violence service.

**"Secretary"** means the DSHS secretary or the secretary's designee.

**"Shelter"** means a safe home or shelter home that provides temporary refuge and adequate food and clothing offered on a twenty-four hour, seven-day-per-week basis to victims of domestic violence and their children.

**"Shelter home"** means a shelter that has three or more lodging units and either is a component of or has a written working agreement with a domestic violence service.

**"Staff"** means persons who are paid or who volunteer services and are a part of a domestic violence service.

**"Victim"** means a cohabitant who has been subjected to domestic violence.

**"We, us and our"** refers to the department of social and health services and its employees.

**"You, I and your"** refers to the domestic violence service or shelter.

**AMENDATORY SECTION** (Amending WSR 01-07-053, filed 3/16/01, effective 4/16/01)

**WAC 388-61A-0135 What are the additional requirements for a shelter home?** Shelter homes must meet the following additional requirements in order for a domestic violence service to contract with us:

(1) When a shelter home is not a component of a domestic violence service, the shelter home and domestic violence service must have a written working agreement before the shelter home receives clients from the domestic violence service. The written working agreement must include:

(a) Confirmation that the domestic violence service has inspected the shelter home and that the shelter home complies with the general facility and additional requirements for shelter homes;

(b) How the domestic violence service will provide supportive services to shelter home residents; and

(c) Verification that shelter home staff received initial basic training as outlined in this rule by the domestic violence service.

(2) Shelter homes must provide at least one toilet, sink, and bathing facility for each fifteen clients or fraction of this number. The floors of all toilet and bathing facilities must be resistant to moisture.

(3) You must have at least one telephone at the shelter for incoming and outgoing calls. Next to the telephone in shelter homes you must post:

(a) Emergency telephone numbers; and

(b) Instructions on how residents can access domestic violence service staff.

(4) In shelter homes all bathrooms, toilet rooms, laundry rooms, and janitor closets containing wet mops and brushes must have natural or mechanical ventilation in order to prevent objectionable odors and condensation.

(5) When staff serve food to clients in shelter homes, the staff must prepare the food in compliance with WAC 246-215-190, Temporary food service establishment.

(6) Shelter homes must develop and post hygiene procedures for handling and storing diapers and sanitizing the changing area.

(7) Shelter homes must ~~((comply with the fire and life safety requirements as outlined in chapter 51-40 WAC))~~ request an annual fire and life safety inspection from their local fire department or fire marshal. The domestic violence service must maintain documentation of the request as well as any report issued as a result of the inspection. Any viola-

tions noted by the inspector must be immediately corrected by the domestic violence service.

(8) Shelter homes must meet the following requirements for bedrooms:

(a) Bedrooms must have a minimum ceiling height of seven and half feet;

(b) Bedrooms must provide at least fifty square feet of usable floor area per bed; and

(c) Floor area where the ceiling height is less than five feet cannot be considered as usable floor area.

(9) When clients are residing in a shelter home at least one domestic violence service staff member must be present or on-call to go to the shelter home twenty-four-hours a day, seven-days-per-week.

**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 388-61A-0146 What information must the domestic violence service keep confidential?** (1) Agents, employees, and volunteers of a domestic violence service must maintain the confidentiality of all personally identifying information, confidential communications, and all confidential information as defined by WAC 388-61A-0025. Information which individually or together with other information could identify a particular victim of domestic violence must also be kept confidential.

(2) Any reports, records, working papers, or other documentation, including electronic files, maintained by the domestic violence service, including information provided to the domestic violence service on behalf of the client. Any information considered privileged by statute, rule, regulation or policy that is shared with the domestic violence service on behalf of the client shall not be divulged without a valid written waiver of the privilege that is based on informed consent, or as otherwise required by law.

(3) You must comply with the provisions of this section regarding confidential communications concerning clients regardless of when the client received the services of the domestic violence service.

#### NEW SECTION

**WAC 388-61A-0147 What information can be disclosed?** (1) You can disclose confidential information only when:

(a) The client provides informed, written consent to the waiver of confidentiality that relates only to the client or the client's dependents;

(b) Failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the client or other person;

(c) Disclosure is required under Chapter 26.44 RCW, Abuse of Children;

(d) Release of information is made to an authorized person to the extent necessary for a management audit, financial audit, or program evaluation with the following restrictions:

(i) The authorized person shall sign a confidentiality agreement with the domestic violence service that demon-

strates his or her acknowledgment of the requirement that client information be kept confidential;

(ii) No personally identifying information about the client can be copied or removed from the domestic violence service;

(iii) No copies of working papers or other documentation about the client can be removed from the domestic violence service; and

(iv) The client file cannot be removed from the premises of the domestic violence service.

(e) Release of information is otherwise required by law or court order, or following in-camera review pursuant to RCW 70.123.075, with the following additional requirements:

(i) The domestic violence service shall make reasonable attempts to provide notice to the person affected by the disclosure of the information; and

(ii) If personally identifying information is or will be disclosed, the domestic violence service shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of information.

(2) Any release of information subject to any of the exceptions set forth above shall be limited to the minimum necessary to meet the requirement of the exception, and such release does not void the client's right to confidentiality and privilege on any other confidential communication between the client and the domestic violence service.

(3) In the case of an unemancipated minor, the minor and the parent or guardian must provide the written consent. Consent for release may not be given by a parent who has abused the minor or the minor's other parent. In the case of a disabled adult who has been appointed a guardian, the guardian must consent to release unless the guardian is the abuser of the disabled adult.

(4) To comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may disclose nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information.

(5) If requested, a copy of the disclosed information shall be provided to the client.

#### NEW SECTION

**WAC 388-61A-0148 What information needs to be included in a written waiver of confidentiality?** (1) To be valid, a written waiver of confidentiality must:

(a) Be voluntary;

(b) Relate only to the client or the client's dependents;

(c) Clearly describe the scope and any limitations of the information to be released;

(d) Include an expiration date for the release; and

(e) Inform the client that consent can be withdrawn at any time whether it is made orally or in writing.

(2) If the written waiver of confidentiality does not include an expiration date, it shall expire ninety days after the date it was signed.

NEW SECTION

**WAC 388-61A-0149 What information must be provided to clients about their right to confidentiality? (1)**

You must provide each client with a written "Notice of Rights" at the time of initial and any subsequent intake into the domestic violence service. At a minimum, the Notice of Rights shall inform clients of the following:

- (a) The client's right to privacy and confidentiality of the information shared with the domestic violence service;
- (b) Exceptions to confidentiality as described in this chapter;
- (c) That if the client signs a written waiver of confidentiality that allows their information to be shared with others, the client does not give up their right to have that information protected under other statutes, rules or laws;
- (d) That the client has the right to withdraw a written waiver of confidentiality at any time; and
- (e) That the domestic violence service will not condition the provision of services to the client based on a requirement that the client sign one or more releases of confidential information.

(2) Information on the "Notice of Rights" must be explained to the client at the time of intake into the domestic violence service and then again, at the time the client is considering whether to sign a written waiver of confidentiality.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-61A-0185 What are my rights if DSHS suspends, revokes, or denies funding?
- WAC 388-61A-0190 Will I be notified if my funding has been suspended, revoked, or denied?
- WAC 388-61A-0195 How do I request an agency hearing?

**WSR 07-04-100**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed February 6, 2007, 4:04 p.m., effective March 9, 2007]

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

Purpose: WAC 458-20-254 defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems. The department amended to [the] rule to update the information in line with the provisions of the MTC/s [MTC's] model recordkeeping and retention regulation and Internal Revenue Service guidelines.

Citation of Existing Rules Affected by this Order:  
Amending WAC 458-20-254 Recordkeeping.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 06-17-152 on August 22, 2006.

Changes Other than Editing from Proposed to Adopted Version: The department added the following language to the introductory subsection:

The general requirement imposed on taxpayers is to retain and make available those records necessary to verify that the correct tax liability has been reported and paid by the taxpayer with respect to the taxes administered by the department of revenue. The records provided to the department are confidential and privileged. Such records may not be disclosed by the department, except as provided by RCW 82.32.330.

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: February 6, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

AMENDATORY SECTION (Amending Order 89-6, filed 5/16/89)

**WAC 458-20-254 Recordkeeping.** ~~((1) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW, and, chapters 67.28 (hotel/motel tax), 70.93 (litter tax), 70.95 (tax on tires), and 84.33 RCW (forest excise tax), shall keep complete and adequate records from which the department may determine any tax for which such person may be liable.~~

**(2) General requirements:**

~~(a) It is the duty of each taxpayer to prepare and preserve all books of record in a systematic manner conforming to accepted accounting methods and procedures. Records are to be kept, preserved, and presented upon request of the department which will demonstrate:~~

~~(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable.~~

These amounts must be supported by original source documents including but not limited to all purchase and sales invoices and contracts or such other documents as may be necessary to substantiate gross receipts and sales;

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting documentation required by statute or administrative rule, or such other supporting documentation necessary to substantiate the deduction, exemption, or credit.

(b) The records kept, preserved and presented must include the normal books of account maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, check registers, and purchase journals, together with all bills, invoices, cash register tapes, or other documents of original entry supporting the books of account entries. The records shall include all federal and state tax returns and reports and all schedules or work papers used in the preparation of tax reports or returns.

(c) All such records shall be open for inspection and examination at any time by the department, upon reasonable notice, and shall be kept and preserved for a period of five years. RCW 82.32.070

(3) ~~Microfilm and/or microfiche.~~ Records may be microfilmed or microfiched, such as general books of accounts including cash books, journals, voucher registers, ledgers and like documents provided the microfilmed and/or microfiched records are authentic, accessible, and readable, and all of the following requirements are fully satisfied:

(a) Appropriate facilities are provided to preserve the films or fiche for the periods such records are required to be open to examination and to provide transcriptions of any information on film or fiche required to verify tax liability.

(b) All microfilmed or microfiched data must be indexed, cross referenced, and labeled to show beginning and ending numbers and beginning and ending alphabetical listings of all documents included.

(c) Taxpayers must make available upon request of the department, a reader/printer in good working order at the examination site for reading, locating, and reproducing any record that is maintained on microfilm or microfiche.

(d) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the names of persons who are responsible for maintaining and operating the system with appropriate authorization from the boards of directors, general partner(s), or owner(s), whichever is applicable.

(e) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.

(f) Taxpayers must establish procedures with the appropriate documentation so that an original document can be traced through the microfilm or microfiche system.

(g) Taxpayers must establish internal procedures for microfilm or microfiche inspection and quality assurance.

(h) Taxpayers must keep a record identifying where, when, by whom, and on what equipment the microfilm or microfiche was produced.

(i) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must be legible

and readable. For this purpose, legible means the quality of a letter or numeral which enables the reader to identify it positively and quickly to the exclusion of all other letters or numerals. Readable means the quality of a group of letters or numerals recognizable as words or complete numbers.

(j) All production of microfilm or microfiche and the processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

(4) ~~Automated data process system.~~ An automated data process (ADP) accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose must include a method for producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer who maintains records on an ADP system:

(a) ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are done, the system must have the capability to reconstruct these transactions.

(b) A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In the cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall be written out periodically.

(c) The audit trail shall be so designed that the details underlying the summary accounting data may be identified and made available to the department and that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

(d) A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(i) The application being preformed;

(ii) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and,

(iii) The controls used to insure accurate and reliable processing.

(e) Important changes in an ADP accounting system or any part thereof, together with their effective dates, shall be noted to preserve an accurate chronological record of such changes.

(f) Adequate record retention facilities shall be available for the storage of such information, printouts and all supporting documents.

(5) ~~Out-of-state businesses.~~ An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department, or, permit the examination of the records by the department at the place where the records are kept. RCW 82.32.070, see also, WAC 458-20-215.

(6) ~~Failure of taxpayer to maintain and disclose complete and adequate records.~~ Any person who fails to com-



ply with the requirements of RCW 82.32.070 or this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept and preserved. RCW 82.32.070)) (1) **Introduction.** This section defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

The general requirements imposed on taxpayers are to retain and make available those records necessary to verify that the correct tax liability has been reported and paid by the taxpayer with respect to the taxes administered by the department of revenue ("department"). The records provided to the department are confidential and privileged. Such records may not be disclosed by the department, except as provided by RCW 82.32.330.

(2) **Definitions.** For purposes of this section, the following definitions will apply:

(a) "Data base management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a data base.

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) "Hard copy" means any documents, records, reports or other data printed on paper.

(d) "Machine-sensible record" means a collection of related information in any electronic format (e.g., data base management systems, EDI technology, automated data process systems, etc.). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "Records" means all books, data, documents, reports, or other information, including those received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

**(3) Recordkeeping requirements—General.**

(a) Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, e.g., Title 82 RCW, chapter 67.28 RCW (hotel/motel tax), chapter 70.95 RCW (fee on tires), and chapter 84.33 RCW (forest excise tax), must keep complete and adequate records from which the department may determine any tax liability for such taxpayer.

(b) It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be

kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.

(iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 for information on the refund process.

(c) The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

(d) If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, although this does not eliminate the requirement that they provide access to machine-sensible records, if requested.

(e) Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

(f) At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in subsection (6) of this section.

(g) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(4) **Record retention period.** All records must be open for inspection and examination at any time by the department, upon reasonable notice, and must be kept and preserved for a period of five years. RCW 82.32.070

(5) **Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of RCW 82.32.070 or this section is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. RCW 82.32.070

(6) **Electronic records.**

(a) **Electronic data interchange requirements.**

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) **Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this section.

(c) **Internal controls.**

(i) Upon the request of the department, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this section:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

(7) **Access to machine-sensible records.**

(a) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine-sensible records.

(ii) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

(iv) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(8) **Storage-only imaging systems.**

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this section to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five years.

(iii) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legi-

bility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(v) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(vi) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

**(9) Effect on hard-copy recordkeeping requirements.**

(a) The provisions of this section do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this section. Hard-copy records may be retained on a recordkeeping medium as provided in subsection (8) of this section.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this section.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section prevents the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**(10) Out-of-state businesses.** An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department or permit the examination of the records by the department or its authorized representatives at the place where the records are kept. RCW 82.32.070.

**WSR 07-04-119**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed February 7, 2007, 11:36 a.m., effective March 10, 2007]

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

Purpose: WAC 458-20-185 (Rule 185) provides tax-reporting information to persons who sell, use, handle, possess, transport, store, or distribute tobacco products. The rule has been amended to update existing information and incorporate significant legislative amendments to chapter 82.26 RCW.

The previous version of Rule 185 provided that the other tobacco products (OTP) tax "does not apply to tobacco products sold to federal government agencies... and a credit may be taken for the amount of tobacco products tax previously

paid on such products." These instructions are not included in the amended [amendment] because the department determined that the instructions are not authorized by current statute. As a result, a credit for taxes previously paid on tobacco products sold to federal entities is no longer allowed.

WAC 458-20-186 (Rule 186) provides tax-reporting information to persons who sell, use, consume, handle, possess, or distribute cigarettes. The rule explains who is liable for the tax, how and when the cigarette tax imposed by chapter 82.24 RCW is to be paid, and the record-keeping requirements. It also explains the application process for wholesale and retail cigarette vendor licenses, and the responsibilities of persons making "delivery sales" into this state. It includes references to statutory fees, bonding requirements, and explains the conditions for and process of application for reinstatement of a license following a revocation under the Administrative Procedure Act.

The rule has been amended to update existing information, incorporate recent legislative changes, and clarify that the "stamping allowance" for wholesalers is income subject to the business and occupation tax, not merely a discount on the price of the stamps.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-185 Tax on tobacco products and 458-20-186 Tax on cigarettes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 06-20-113 (Rule 185) and 06-20-112 (Rule 186) on October 4, 2006.

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

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

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

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

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

Date Adopted: February 7, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
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**AMENDATORY SECTION** (Amending WSR 03-12-058, filed 6/2/03, effective 7/3/03)

**WAC 458-20-185 Tax on tobacco products. ((+))**  
~~**Introduction.** This rule explains the tax liabilities of persons engaged in business as a retailer, distributor or subjobber of tobacco products. The tax on tobacco products is in addition to all other taxes owed. For example, retailers, distributors, and subjobbers are liable for business and occupation tax on~~

their retailing or wholesaling activities, use tax on tobacco products distributed as samples, and litter tax on the value of the tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

(2) **Definitions.** The following definitions apply to this rule:

(a) "Tobacco products" means all tobacco products except cigarettes as defined in RCW 82.24.010. The term includes:

- (i) Cigars, cheroots, stogies, and periques;
- (ii) Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;
- (iii) Snuff, snuff flour, cavendish, plug and twist tobacco, fine cut, and other chewing tobaccos; and
- (iv) Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) "Manufacturer" means a person who manufactures and sells tobacco products.

(c) "Distributor" means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(d) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(e) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(f) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes all gifts by persons engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of chapter 82.26 RCW, or for any other purposes whatsoever.

(g) "Wholesale sales price" means the established price for which a manufacturer sells tobacco product to the distributor, exclusive of any discount or other reduction.

(i) A wholesale sales price that is an established price must reflect the fair market value of the tobacco products. In the case where a seller and buyer establish a sales price that does not reflect fair market value, such as may occur in certain sales between affiliated companies, the wholesale sales price is the fair market value of the tobacco product and not the sales price established by the seller and buyer.

(ii) The phrase "discount or other reduction" includes any reduction from the established wholesale sales price made to a specific customer or class of customers.

**Example.** Pursuant to a half-price promotion, a manufacturer sells tobacco products to a distributor. The invoice lists \$100 as the price of the product less a \$50 discount resulting in a net invoice of \$50. The tax is due on \$100 which is the wholesale sales price exclusive of any discount or other reduction.

(h) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(i) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

(j) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(k) "Department" means the department of revenue.

(l) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(m) "Indian country" means the same as defined in WAC 458-20-192.

(3) **Rate and measure of tax.** The Washington state tobacco products tax is an excise tax levied on the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state.

The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020, 82.26.025, and 82.26.028. The total current rate of tax is shown on the current combined excise tax return.

(4) **Imposition of tax.** The tax is imposed once on all tobacco products sold, used, consumed, handled, or distributed within this state.

(a) **When tax is imposed.** The tax is imposed at the time the distributor:

(i) Brings, or causes to be brought, into this state from without the state tobacco products for sale; or

(ii) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(iii) Ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Handles for sale any tobacco products that are within this state but upon which tax has not been imposed. For example, a retailer with a place of business in this state purchases for sale tobacco products from an enrolled tribal member of a federally recognized tribe located within Indian country. Because the tax was not imposed on the enrolled tribal member, the retailer must pay the tax.

(b) **Additional occasion when tax may be imposed.** Any retailer who fails to keep invoices as required under chapter 82.32 RCW and which invoices do not conform to

the requirements set forth in subsection (5)(b) of this rule is liable for the tax on any uninvoiced tobacco product which that retailer handles for sale.

~~(c) When an out of state person is a distributor who must pay the tax.~~ A person located out of state who is selling tobacco products to Washington wholesalers from a stock of goods located outside this state is not a distributor and therefore is not liable for the tax.

(i) On the other hand, a person located out of state who is selling and shipping tobacco products to Washington retailers from an out of state stock of goods is a distributor and is subject to the tax. If the out of state person is not required to register and pay taxes in Washington, the retailers to whom it sells must pay the tax. However, such out of state persons may elect to register with the state and pay the tax.

(ii) A Washington retailer who purchases tobacco from an out of state stock of goods from a person located out of state who is not required to register and pay taxes in Washington may provide to that person a certificate affirming that the Washington retailer will remit to the state the tax due. Both the out of state person and the Washington retailer should retain a copy of such certificate. The certificate should substantially conform to the example shown below:

Retailer's Certificate of Remittance of Tax

The undersigned retailer hereby certifies that the undersigned will remit to the state the tax due on the tobacco products specified below purchased from seller. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked by the undersigned in writing or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller: .....  
Name of Retailer: ..... Effective Date: .....  
UBI/Registration # .....  
Address of Retailer: .....  
Tobacco products purchased: .....  
Agent for Retailer (print) .....  
Signature: .....

~~(iii) A person who is located out of state and who is required to register and pay taxes in Washington may sell and ship tobacco products to a Washington customer who is both a wholesaler and retailer. Under this circumstance, the person, the customer, and the department may enter into a written agreement that identifies the person who will remit to the state the tax due as to those particular sales. The written agreement will contain such other terms and conditions that are acceptable to the department.~~

~~(iv) When a person located outside Washington distributes samples in this state, that person must pay the tax on those samples.~~

~~(5) Books and records.~~ Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained. The records must include all pertinent papers and documents relating to the purchase, sale, or disposition of

tobacco products and must be kept for a period of at least five years after the date of the document or the date of the entry appearing in the records.

~~(a) Distributors.~~ Distributors must keep at each registered place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products except retail sales. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

~~(b) Retailers and subjobbers.~~ Retailers and subjobbers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

~~(c) Warehouses.~~ Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

~~(6) Nonpayment of tax by retailers.~~ If the department finds that any nonpayment of tax by the retailer was willful, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. In the case of a second or plural nonpayment of tax by the retailer, penalties and interest will be assessed in accordance with chapter 82.32 RCW without regard to willfulness.

(a) Example. In the course of an audit of Retailer, the department determines that on several occasions Retailer failed to pay the tax. The department does not find the nonpayment to be willful. Retailer owes the tax due on all occasions of nonpayment and the penalties and interest is assessed on all but the first occasion of nonpayment. A few years later Retailer is audited again. The department finds one occasion of nonpayment of tax. In addition to the tax due, penalties and interest will be assessed in accordance with chapter 82.32 RCW.

(b) Example. In the course of an audit of Retailer #2, the department determines that on several occasions Retailer #2 failed to pay the tax. The department determines that the nonpayment of tax was willful. In addition to the tax due on all occasions of nonpayment, Retailer #2 owes penalties and interest on all occasions.

~~(7) Reports and returns.~~ The tax is reported on the combined excise tax return to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

Out of state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.

Retailers, distributors, and subjobbers may be required to file a report with the department in compliance with the

provisions of the National Uniform Tobacco Settlement when purchasing tobacco products from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

**(8) Interstate sales and sales to U.S.**

(a) The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers outside the state for resale by such retailers, and a credit may be taken for the amount of tobacco products tax previously paid on such products. RCW 82.26.110. The credit is not available for sales made for delivery outside this state other than sales for resale to retailers. For example, no credit may be taken for a sale of tobacco products delivered to a consumer outside the state.

(b) To document that the tobacco products were sold to a retailer outside the state for resale by such retailer, the person may obtain from the retailer a certificate which substantially conforms to the following:

**Retailer's Certification of Purchase of Tobacco Products for Resale Outside Washington**

The undersigned buyer/retailer hereby certifies that the tobacco products specified below are purchased for resale outside this state by the undersigned. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked in writing by the undersigned or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller ..... Effective Date .....  
UBI/Registration # .....  
Name of Buyer/Retailer Business .....  
Address .....  
Items purchased for resale .....  
Agent for buyer/retailer (print) .....  
Signature .....

**(9) Returned or destroyed goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid. If the credit is claimed against tax owed by the taxpayer or as a refund of tax paid, taxpayers must retain in their records appropriate documentation, affidavits or certificates conforming to those illustrated below:

**(a) Certificate of taxpayer:**

**Claim for Credit on Tobacco Products  
Tax Merchandise Destroyed**

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is            (Title)            of the            (Business Name), a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$           ; that tobacco tax had been paid on such tobacco products; that the tobacco products were destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

.....  
(State date and manner of destruction)  
.....  
.....

Attested to:  
Date .....

By .....  
Signature of Taxpayer or  
Authorized Representative:  
.....  
Position with Dealer  
.....  
Dealer  
.....  
Address of Dealer  
.....

APPROVED:

.....  
Authorized Agent of  
Department of Revenue of the  
State of Washington:

**(b) Certificate of manufacturer:**

**Claim for Credit on Tobacco Products  
Tax Merchandise Returned:**

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is            (Title)            of the            (Business Name), a manufacturer of tobacco products; that the manufacturer has received from            (Dealer),            (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, the tobacco products having a wholesale sales price of \$           ; that the tobacco products were destroyed in the following manner:

.....  
(Indicate date and manner of destruction)  
.....

Credit issued on Memo No. ....  
credit approved by: .....  
.....  
on behalf of the Department  
of Revenue—State of  
Washington

Signature of Taxpayer or  
Authorized Representative  
.....  
Name of Manufacturer  
.....  
Address  
.....

**(10) Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers, distributors, and subjobbers must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products contained in the premises and to examine the books and records of the business. Failure to allow free access or to hinder or interfere with department personnel and/or enforcement officers of the liquor control board may result in the revocation of the business license.)

**(1) Introduction.** This rule explains the tax liabilities of per-

sons engaged in business as retailers or distributors of tobacco products other than cigarettes. The tax on tobacco products (also called "other tobacco products tax," "tobacco tax," or "OTP tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, sales tax, and litter tax. See WAC 458-20-186 for tax liabilities associated with taxes that apply exclusively to cigarettes.

(2) **Organization of rule.** The information provided in this rule is divided into five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

(b) Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of tobacco products in this state.

(c) Part III explains the requirements and responsibilities for persons transporting tobacco products in Washington.

(d) Part IV explains the recordkeeping requirements and enforcement of the tobacco tax.

(e) Part V describes the credits for tax paid and the procedures that must be followed to qualify for credit.

### **Part I - Tax on Tobacco Products (excluding Cigarettes)**

(101) **In general.** The Washington state tobacco products tax is due and payable by the first distributor who possesses tobacco products in this state. The measure of the tax in most instances is based on the actual price paid by the distributor for the tobacco product, unless the distributor is affiliated with the seller.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Actual price"** means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(b) **"Affiliated"** means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(c) **"Board"** means the liquor control board.

(d) **"Business"** means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(e) **"Cigar"** means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products from outside this state who ships or trans-

ports tobacco products to retailers in this state, to be sold by those retailers;

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 (3)(a) through (d). (For example, Sunshine Tobacco Shop ("Sunshine") buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a retailer's and a distributor's license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a retailer's license.)

(i) **"Indian," "Indian country," and "Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Manufacture"** means the production, assembly, or creation of new tobacco products. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) **"Manufacturer"** means a person who manufactures and sells tobacco products.

(l) **"Manufacturer's representative"** means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(m) **"Person"** means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(n) **"Place of business"** means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(o) **"Retailer"** means any person engaged in the business of selling tobacco products to ultimate consumers.

(p) **"Retail outlet"** means each place of business from which tobacco products are sold to consumers.

(q) **"Sale"** means:

(i) Any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(ii) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(r) **"Sample"** and **"sampling"** have the same meaning as in RCW 70.155.010.

(s) "Store," "stores," or "storing" means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

(i) Wilderness Enterprises ships products from out-of-state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see subsection (501) of this section for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises (the distributor), not Easy Storage, is responsible for the tax and reporting requirements on the stored tobacco products.

(t) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as defined in (m) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country:

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

For purposes of this subsection, "person" includes both persons as defined in (m) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country:

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price for which other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in (q)(ii) of this subsection, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (t)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other

distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(u) "Taxpayer" means a person liable for the tax imposed by chapter 82.26 RCW.

(v) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, including wrapping papers or tubes that contain any amount of tobacco (such as "blunts"), prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

(w) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(x) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(103) Imposition of tax. RCW 82.26.030 as amended effective July 1, 2005, states: "It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller." The tax is imposed at the time the first distributor possesses the product in this state for sale. RCW 82.26.020(2).

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the tax is imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) BET Wholesalers sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises a licensed distributor, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the liquor control board (LCB) notice of its intent to ship tobacco products into this state.

(b) BET Wholesalers sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises, a licensed distributor in Washington. The tax is due from BET Wholesalers, because it is the first possessor in Washington that holds the product for sale.

(c) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via National Common Carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the liquor control board (LCB) notice of its intent to ship tobacco products into this state.

(104) Rates. The Washington state tobacco tax is an excise tax levied on the taxable sales price as defined in RCW 82.26.010. The rate is a combination of statutory rates found in RCW 82.26.020.



**(105) Promotions.**

(a) Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010 (5)(b). The taxable sales price for the tobacco products is the actual price for which the taxpayer or other distributors sell the same tobacco products, or a maximum of 67 cents each for cigars. RCW 82.26.010(18).

For example, Etta's (an out-of-state manufacturer) gives Joe's Distributing 500 cigars and 200 cans of snuff as a promotion. Etta's and Joe's Distributing are unaffiliated. Joe's Distributing normally sells this brand of cigars for \$1.00 each and the snuff for \$2.50 each to unaffiliated distributors and/or retailers. Joe's Distributing owes tobacco products tax on this merchandise. Because Joe's Distributing normally sells each cigar for more than 67 cents, the tobacco products tax is calculated on the cigars at 50 cents each ( $500 \times 0.50 = \$250$ ). The tobacco products tax on the snuff is calculated at 75% of Joe's normal selling price to unaffiliated buyers ( $200 \times \$2.50 = \$500 \times 75\% = \$375$ ) for a total tobacco products tax of \$625.

(b) If a product is purchased or sold at a discount in a promotion characterized as a "2 for 1" or similar sale, the tax is calculated on the actual prorated consideration the buyer paid to the unaffiliated distributor, or a maximum of 67 cents a cigar.

For example:

(i) Duke Distributing (an out-of-state wholesaler) ships tobacco products via common carrier to Lem's Tobacco Shop (an unaffiliated Washington retailer). Duke invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Lem's Tobacco Shop is liable for the tax. The tax on the chewing tobacco is \$975 ( $\$1,300 \times 75\%$ ). Each cigar costs Lem's Tobacco Shop \$1 ( $\$200/200$  cigars = \$1 per cigar). Because each cigar costs more than 67 cents, the tax on the cigars is capped at \$0.50 each. The tax on the cigars is \$100 ( $200$  cigars  $\times$   $\$0.50 = \$100$ ). Total tobacco tax due on the invoice is \$1,075.

(ii) Shasta Distributing (an out-of-state wholesaler) ships OTP in its own trucks to Lem's Tobacco Shop (an unaffiliated Washington retailer). Shasta invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Shasta Distributing owes the tax. Shasta originally purchased the products from an unaffiliated manufacturer for \$300 (\$100 for the cigars and \$200 for the chewing tobacco). The tax on the chewing tobacco is \$150 ( $\$200 \times 75\%$ ). The tax on the cigars is \$75 ( $\$100 \times 75\% = \$75$ ), because the cigars cost less than 67 cents each ( $\$100/200$  cigars = 50 cents per cigar). Total tobacco tax due on the invoice is \$225.

(iii) Wind Blown Distributing (an out-of-state wholesaler) ships tobacco products in its own trucks to Lem's Tobacco Shop (an unaffiliated retailer located in this state). Wind Blown invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Wind Blown Distributing owes the tax. Wind Blown originally purchased the products from an affiliated manufacturer for

\$100 (\$25 for the cigars and \$75 for the chewing tobacco). The measure of the tax is the actual price for which Wind Blown sells these products to unaffiliated buyers, i.e., Lem's. The tax due on the chewing tobacco is \$975 ( $\$1,300 \times 75\%$ ). The tax on the cigars is \$100 ( $200$  cigars  $\times$  50 cents). The tax on the cigars is capped at \$0.50 each, because each cigar costs more than 67 cents ( $\$200/200$  cigars = \$1 per cigar). Total tobacco tax due on the invoice is \$1,075.

## **Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities**

(201) **License required.** No person may engage in the retail or wholesale distribution of tobacco products in this state without a license.

(202) **Distributor's license.** Prior to selling or distributing tobacco products from a stock of goods in Washington or to retailers in Washington, each distributor must first obtain a tobacco distributor's license from the department of licensing.

(a) **Background check.** Each distributor must undergo a criminal background check before a license will be issued. Chapter 82.26 RCW. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may result in denial of the license. A background check will not be required if the applicant has had a background check for a license issued under chapter 66.24 or 82.24 RCW.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A distributor's license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual distributor cigarette fees under RCW 82.24.510.

(c) **Multiple locations.** If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

### **(203) Duties and responsibilities of licensed distributors.**

(a) **Sales restricted.** Wholesalers selling tobacco products in this state may sell tobacco products only to Washington retailers or wholesalers who have a current tobacco license, to other licensed wholesalers, the federal government or its instrumentalities, or to Indian tribal entities authorized to possess untaxed tobacco products.

(b) **Manufacturer's representatives.** Manufacturers selling tobacco products through manufacturer's representatives must provide the department a current list of the names, addresses and telephone numbers of all such representatives. The list is mailed to: Washington State Department of Revenue, P.O. Box 47477, Olympia, WA 98504. The manufacturer must have a distributor's license and its representatives must carry a copy of the manufacturer's distributor license at all times when selling or distributing the manufacturer's tobacco products.

(204) Retail license. Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a retail tobacco license from the department of licensing. A license is required for each location at which tobacco products are sold at retail. Each license must be exhibited at the place of business for which it is issued.

Application. Applications for license or renewals of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A retail tobacco license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual retailer cigarette fees under RCW 82.24.510.

(205) Duties and responsibilities of retailers. A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian smoke shop or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due.

(206) Suspension or revocation of wholesale or retail tobacco licenses.

(a) The department has full power and authority to suspend or revoke the license of any wholesale or retail tobacco dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.26 RCW or this rule. See RCW 82.26.220 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a tobacco products license and a cigarette license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the tobacco license will also result in revocation of the cigarette license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes on premises occupied or controlled by that person during the period of the suspension or revocation.

(d) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

### **Part III - Transporting Tobacco Products in Washington**

#### **(301) Transportation of tobacco products restricted.**

(a) Only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and

address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers, agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via National Common Carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

### **Part IV - Recordkeeping and Enforcement**

(401) Books and records. An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) Distributors. Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) Retailers. Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

(402) Reports and returns. The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) Tax returns. The tax is reported on the combined excise tax return that must be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) Reports. Retailers and distributors may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement

when purchasing tobacco products (e.g., "roll your own tobacco") from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

**(403) Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

**(404) Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

**(405) Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or hinders, or interferes with department personnel and/or enforcement officers of the liquor control board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department.

**(406) Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

**Part V - Credits**

**(501) Credits.**

**(a) Interstate and foreign sales.** A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

**(b) Returned or destroyed goods.** A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

**(c) Documentation.** Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. Affidavits or certificates are required, and must substantially conform to those illustrated below. The affidavits or certificates must be completed by the taxpayer prior to claiming the credit, and must be retained with the taxpayer's records as set forth in Part VI of this rule.

**Claim for Credit on Tobacco Products Sold for Resale Outside Washington**

The undersigned distributor under penalty of perjury under the laws of the state of Washington certifies that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), purchased the tobacco products specified below for resale outside this state. Tobacco products tax has been paid on such tobacco products as set forth below.

Products were purchased from: (name of business)

\_\_\_\_\_  
Date

Products were sold to: (name of out-of-state buyer)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

<u>Product</u>	<u>Taxable sales price</u>	<u>Quantity</u>	<u>Tax paid</u>
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

Signature of Taxpayer or Authorized Representative: . . . . .

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title:

**Claim for Credit on Tobacco Products Destroyed Merchandise**

**(i) Certificate of taxpayer.**

<u>Product</u>	<u>Taxable sales price</u>	<u>Quantity</u>	<u>Tax paid</u>
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), a dealer in tobacco products, has destroyed tobacco products unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above. The tobacco products were destroyed in the manner set forth below. The destruction occurred either:  
(A) In the presence of an authorized agent of the department of revenue; or

(B) With prior authorization from the department to destroy the product without an agent of the department present.

Date, manner, and place of destruction: .....  
.....

Signature of Taxpayer or Authorized Representative: .....  
.....

Name: .....

Title: .....

Witnessed or approved: .....

Authorized Agent, Department of Revenue

**Claim for Credit on Tobacco Products Returned Merchandise**

**(ii) Certificate of manufacturer.**

<b><u>Product</u></b>	<b><u>Taxable sales price</u></b>	<b><u>Quantity</u></b>	<b><u>Tax paid</u></b>
<u>Cigars exceeding \$0.67 per cigar</u>	N/A		
<u>Cigars not exceeding \$0.67 per cigar</u>		N/A	
<u>All tobacco products that are not cigars</u>		N/A	

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), a dealer in tobacco products, has returned merchandise unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above.

Returned to: .....

Date: .....

Method of transport: .....

Manufacturer's credit issued on: .....

Credit memo number: .....

Signature of Taxpayer or Authorized Representative: .....  
.....

Name: .....

Title: .....

AMENDATORY SECTION (Amending WSR 05-02-035, filed 12/30/04, effective 1/30/05)

**WAC 458-20-186 Tax on cigarettes. (1) Introduction.** This rule addresses those taxes and licensing activities that apply exclusively to cigarettes as defined by RCW 82.24.010. See WAC 458-20-185 for tax liabilities and registration requirements associated with tobacco products other than cigarettes. The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.)

**(2) Organization of rule.** The information provided in this rule is divided into seven parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of cigarettes in this state.

(c) Part III explains the stamping requirements and how the cigarette tax rates are calculated.

(d) Part IV describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(e) Part V explains the requirements and responsibilities for persons transporting cigarettes in Washington.

(f) Part VI explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.

(g) Part VII explains the enforcement and administration of the cigarette tax.

**Part I - Tax on Cigarettes**

**(101) In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

**(a) Possession.** For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.

**(b) Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part IV of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.

**(c) Imposition of tax.** Ordinarily, the tax obligation is imposed on and collected from the first possessor of

unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.

(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection (702) of this rule.

(102) **Possession of cigarettes in Washington state.**

(a) Every person who is (i) in possession of unstamped cigarettes in this state, and (ii) is not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection (702) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.

(c) **Cigarettes purchased from Indian retailers.** Special rules apply to cigarettes purchased from Indian retailers.

(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192. Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.

(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection (702) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.

(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.

(d) **Cigarettes purchased on military reservations.** Active duty or retired military personnel, and their dependants, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part IV). However, such persons are not permitted to give or resell those cigarettes to others.

(e) **Counterfeit cigarettes.** It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.

(f) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part VII.

**Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities**

(201) **License required.** No person, other than a government instrumentality or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of cigarettes in this state without a license. No person may engage in the business of sampling within this state unless that person has first obtained a sampler's license. Failure to obtain the required license prior to sampling or selling cigarettes at wholesale or retail is a criminal act. RCW 70.155.050.

(202) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Place of business"** means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vehicle, truck, vessel, or the like at which sales are made.

(b) **"Retailer"** means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes, regardless of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(c) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, less the tax levied by the state.

(d) **"Sample" and "sampling" have the same meaning as in RCW 70.155.010.**

(e) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes, as defined in chapter 82.24 RCW, to retailers for the purpose of resale only.

(203) **Wholesale license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a wholesale cigarette license from the department of licensing.

(a) **Background check.** Each wholesaler must undergo a criminal background check before a license will be issued. RCW 82.24.510. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may, in the department's discretion, result in denial of the license.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A wholesale cigarette license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) **Bond required.** Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than \$5,000.00. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license.

(204) **Duties and responsibilities of licensed wholesalers.**

(a) **Stamps.** Only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) **Numbering.** Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell cigarettes only to Washington retailers who have a current retail cigarette license, to other licensed wholesalers, or to Indian tribal entities authorized to possess cigarettes that are not taxed by the state.

(d) **Unstamped cigarettes.** Except as explained in Part IV of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. (For the purpose of this rule, the term "unstamped cigarette" means any cigarette that does not bear a Washington state cigarette stamp as described in Part III of this rule.) Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to 72 hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than 72 hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers who have furnished a surety bond in an amount determined by the department may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government. All unstamped stock must be kept separate and apart from stamped stock.

(e) **Transfers.** Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(205) **Retail license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) **Application.** Applications for license or renewal of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(b) **Vending machines.** Retailers operating cigarette vending machines are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(206) **Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(207) **Additional requirements for manufacturers, wholesalers, retailers, and samplers.** Persons making wholesale or retail sales or engaged in the business of sampling of cigarettes in this state must comply with all the provisions of chapters 70.155 and 70.158 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

(208) **Suspension or revocation of wholesale or retail cigarette licenses.**

(a) The department has full power and authority to revoke or suspend the license of any wholesale or retail cigarette dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.24 RCW or this rule. See RCW 82.24.550 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the cigarette license will also result in revocation of the tobacco license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of cigarettes or tobacco products on premises occupied or controlled by that person during the period of the suspension or revocation.

(d) For the purposes of this rule, "tobacco products" has the same meaning as in RCW 82.26.010.

(e) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

### Part III - Stamping and Rates

(301) **Cigarette stamps.**

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part IV of this rule. The stamp must be applied to the smallest container or package, unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within 30 days following purchase. Licensed wholesalers are ~~((allowed a discount))~~ compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed ("stamping allowance") ~~((; which amount is offset against the purchase price))~~. (The stamping allowance is subject to business and occupation tax under the service and other business activities classification.)

**(302) Rates.**

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in RCW 82.24.020, 82.24.027, and 82.24.028.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

**(303) Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities (~~(will include the stamping allowance and)~~) in the full value of the stamps affixed will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

(c) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

**Part IV - Exemptions**

**(401) In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption.

**(402) Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

**(403) Sales in Indian country.**

(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.

(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.

(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette out-

let to nontribal members are subject to the tax, except as provided in (b) above.

(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.

**(404) Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps. The unstamped stock must be kept separate and apart from any stamped stock.

**Part V - Transporting Cigarettes in Washington**

**(501) Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette tax contract subject to the provisions of RCW 43.06.455. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the liquor control board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

**(502) Notice required.** Persons other than licensed wholesalers intending to transport unstamped cigarettes in this state must first give notice to the liquor control board of their intent to do so.

**(503) Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

**(504) Consignment.** If the cigarettes transported pursuant to subsection (501), (502), or (503) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

**(505) Out-of-state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.

The report may be made either by submitting a duplicate invoice or by completing a form provided by the department,

and must be filed with the department as set forth in subsection (702) of this rule.

(506) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

#### Part VI - Delivery Sales of Cigarettes

(601) **Definitions.** The definitions in this subsection apply throughout this rule.

(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.

(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.

(602) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.

(603) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.-130.

#### Part VII - Enforcement and Administration

(701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

(702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department,

setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the 15th day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the 25th day of the calendar month and must include all transactions occurring in the previous month.

(d) Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer must file a report as required under Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report). This report is due no later than the 10th day of each calendar month and must include all transactions occurring in the previous month.

(e) Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the 15th day of the calendar month immediately following the shipment or delivery.

(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.

(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the cigarettes into this state or first possess them in this state. The tax is paid with a "Tax Declaration for Cigarettes," which may be obtained from the department.

(703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation or possession of 60,000 or fewer cigarettes.** Transportation or possession of 60,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(m).

(b) **Transportation or possession of more than 60,000 cigarettes.** Transportation or possession of more than 60,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110 (2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.



(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

(704) **Search, seizure, and forfeiture.** The department or the liquor control board may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

(705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.